(29,430)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 880.

CHARLES GLEN COLLINS, APPELLANT,

vs.

VICTOR LOISEL, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 **Caption.**

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

No. 17063.

UNITED STATES ex Rel. CHARLES GLEN COLLINS
versus
VICTOR LOISEL, United States Marshal.

Appearances:

J. Zach Spearing and Roland B. Howell, Attorneys for Charles Glen Collins, Appellant.
Robert H. Marr, Attorney for Victor Loisel, U. S. Marshal, and Charles Braithwaite Wallis, His Britannic Majesty's Consul General of the Southern States, namely, Louisiana, Alabama, Mississippi & Florida, Appellees.

Appeal from the District Court of the United States for the Eastern District of Louisiana to the Supreme Court of the United States, Washington, D. C., Returnable Within 30 Days from the 4th Day of January, 1923, at the City of Washington, D. C.

Return day extended to March 5th, 1923, by Hon. Wm. I. Grubb, United States District Judge.

TRANSCRIPT OF RECORD.

2 J. Zach. Spearing, Lawyer, Masonic Temple, New Orleans, La.

In the United States District Court for the Eastern District of Louisiana.

17063.

[Title omitted.]

Petition for Writs of Habeas Corpus and Certiorari.

[Filed September 15, 1922.]

To the United States District Court for the Eastern District of Louisiana:

The petition of Charles Glen Collins respectfully represents and shows to this Honorable Court, as follows:

1. Your petitioner is imprisoned and restrained of his liberty in the House of Detention in the City of New Orleans, in the State of Louisiana, in the custody of Victor Loisel, United States Marshal for the Eastern District of Louisiana, by virtue of a certain warrant dated the 6th day of April, 1922, issued by Honorable Rufus E. Foster, United States District Judge for the Eastern District of Louisiana, sitting as Committing Magistrate, copy of which warrant is hereto annexed, marked "Exhibit 1" and made a part hereof.

2. That said warrant was issued by the said Honorable Rufus E. Foster, Judge acting as Committing Magistrate upon two complaints purporting to have been made by Charles Braithwaite Wallis, Esquire, British Consul General at the City of New Orleans, State of Louisiana, before the said Honorable Rufus E. Foster, Judge acting as Committing Magistrate, copies of which complaints are also hereto annexed marked "Exhibit 2" and "Exhibit 3," and made part hereof.

3 3. That the hearing on the said complaints was had before the said Honorable Rufus E. Foster, Judge, sitting as Committing Magistrate, on the 28th day of June 1922 and the matter was taken under advisement by the said Judge, sitting as Committing Magistrate.

4. That on the 26th day of August 1922, the said Honorable Rufus E. Foster, Judge sitting as Committing Magistrate, entered an order remanding petitioner to the custody of the United States Marshal to await the action of the Secretary of State of the United States in the premises, under which said order petitioner is now held and detained of his liberty by the said Victor Loisel, United States Marshal in the House of Detention in the City of New Orleans, State of Louisiana, in the Eastern District of said State; that the said Judge, as Committing Magistrate on the same day, to-wit: on the 26th day of August 1922 certified the evidence and the testimony taken, and the proceedings had before him to the said Secretary of State as appears from a copy thereof hereto annexed, marked "Exhibit 4" and made part hereof.

5. That petitioner has previously been imprisoned and restrained of his liberty in the said House of Detention in New Orleans in the custody of said United States Marshal for the Eastern District of Louisiana by virtue of three certain warrants dated respectively the 31st day of October 1918 and the 21st day of November 1918 and the 10th day of November 1920 issued by the said Rufus E. Foster, Judge, sitting as Committing Magistrate, copies of which warrants are hereto annexed, marked respectively "Exhibit "A" and "Exhibit "B" and Exhibit M and made part hereof.

6. On the 12th day of November, 1917, your petitioner was arrested and taken into custody by Frank M. Miller, United States Marshal for the Eastern District of Louisiana, under and by virtue of a warrant dated the 5th day of November 1917, issued by Honorable Sam. M. Hitchcock, United States Commissioner for Southern District of New York, a copy of which warrant is also hereto annexed, Marked Exhibit C and made a part hereof.

4 7. That said last mentioned warrant was issued by the said Commissioner upon a complaint purporting to have been made

by C. Olive Bayley, Esquire, British Consul General at the City of New York in the State of New York, before the said Commissioner, a copy of which complaint is also hereto annexed, marked "Exhibit D" and made a part hereof.

8. On the 18th day of October 1918, your petitioner was arrested and taken into custody by the said United States Marshal for the Eastern District of Louisiana, under and by virtue of a warrant dated the 18th day of October 1918, issued by Honorable Rufus E. Foster, United States Judge for the Eastern District of Louisiana, a copy of which warrant is also hereto annexed marked "Exhibit D" and made a part hereof.

9. The said last mentioned warrant was issued by the said Judge upon a complaint purporting to have been made by Thomas F. Carlisle, Esquire, British Consul General at the City of New Orleans in the State of Louisiana before the said Judge, a copy of which complaint is also hereto annexed, marked "Exhibit F" and made a part hereof.

10. On the 18th day of October 1918 and again on the 8th day of November 1918, your petitioner was arrested and taken into custody by the said United States Marshal under and by virtue of two warrants dated the 18th day of October 1918 and the 8th day of November 1918 respectively, issued by Honorable Rufus E. Foster, United States Judge for the Eastern District of Louisiana, a copy of which warrants are also annexed hereto, marked "Exhibit G," and made a part hereof.

11. The said last mentioned warrant was issued by the said Judge upon complaints purporting to have been made by Thomas F. Carlisle, Esquire, British Consul General at the City of New Orleans, in the State of Louisiana, before the said Commissioner, a copy of which complaint *are* also hereto annexed, marked "Exhibit H" and made a part hereof.

12. On the 28th day of October 1918, your petitioner was arraigned before the Honorable Rufus E. Foster, one of the Judges of this Court, sitting as Committing Magistrate, and after hearing held on the 28th day of October 1918, and on the 30th day of October 1918, was remanded to the custody of the said Marshal to await the action of the Secretary of State of the United States in the premises, and the said Honorable Rufus E. Foster, then and there issued his warrant (Exhibit A) therefor to the said Marshal*l*, and certified the evidence and the testimony taken before him to the Secretary of State, and on the same day the said Marshal*l* placed your petitioner in the custody of the Warden of the House of Detention in the City of New Orleans, in the State of Louisiana.

13. On the 21st day of November, 1918, your petitioner was again arraigned before the Honorable Rufus E. Foster, one of the Judges of this Court, sitting as committing Magistrate, and after a further hearing held on the 21st day of November, 1918, was remanded to the custody of the said Marshal*l* to await the action of the Secretary of State of the United States in the premises and the said Honorable Rufus E. Foster then and there issued his warrant (Exhibit B) therefor, to the said Marshal*l*, and certified the evidence and the testimony

taken before him to the said Secretary of State, and on the same day the said Marshal placed your petitioner in the Custody of the Warden of the House of Detention in the City of New Orleans, in the State of Louisiana.

6 14. That the various proceedings hereinabove referred to in articles 5 to 13 both inclusive of this petition were consolidated before and heard and treated as one matter or case by the said Rufus E. Foster, Judge, sitting as Committing Magistrate, and only one certificate was issued by him to the Secretary of State, as the same will more fully appear by reference to the proceedings had and orders entered therein and made part hereof.

15. That in due time petitioner applied to this Honorable Court for a writ of Habeas Corpus based upon certain irregularities in the said proceedings, and denials of rights under the Constitution of the United States and under the Treaty with Great Britain the order for which said writ was duly granted, as the same will more fully appear by reference to the said proceedings entitled "United States ex rel. Charles Glen Collins vs. Frank M. Miller, United States Marshal, No. 15959 of the docket of this Honorable Court" which are made part hereof.

16. That after hearing the following judgment was rendered in said Habeas Corpus Proceedings, to-wit:

In the United States District Court for the Eastern District of Louisiana.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

Judgment.

[Filed Feb. 21, 1919.]

As to the commitment of relator to await the action of the President of the United States on the application for the extradition of relator to answer the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza, relator's application for habeas corpus is denied.

7 As to the commitment based on the charge of obtaining property by false pretenses from Pohoomull Brothers and on the charge of obtaining property by false pretenses from Ganeshi Lall & Sons, the writs of habeas corpus are granted, but relator is remanded to the House of Detention to await further proceedings in said last two named affidavits.

And it is further ordered that, as to the said two affidavits last mentioned, this cause be and is hereby remanded to the Honorable Rufus E. Foster, Judge, to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana.

Given this 21st day of February, 1919. (Signed) W. I. Grubb, U. S. District Judge.

17. That in due time petitioner appealed from the above mentioned judgment to the Honorable the Supreme Court of the United States and seasonably filed the transcript thereof in the said Supreme Court and the same bears the number 27,063 of the docket and number 977 of the October Term, 1918; that Tom. F. Carlisle, British Counsul General likewise appealed from the said judgment, to the said Supreme Court of the United States the transcript in which was duly filed under number 27,064 of the docket and number 978 of the October Term, 1918.

18. That after due hearing therein the said Supreme Court for reasons stated in its opinion, entered a decree on March 29th, 1920 that "Both appeals are dismissed for want of jurisdiction."

19. On November 10th, 1920 your petitioner was again arrested and taken into custody by the said United States Marshal for the Eastern District of Louisiana under and by virtue of a warrant dated the same day issued by Honorable Rufus E. Foster, United States Judge, for the Eastern District of Louisiana, a copy of which warrant is also hereto annexed, marked Exhibit I, and made part hereof.

8 20. The said last mentioned warrant was issued by the said Judge upon complaints purporting to have been made by Charles Braithwaite Wallis, Esquire, British Consul General at the City of New Orleans, State of Louisiana, before said commissioner, copies of which said complaints are also hereto annexed, marked "Exhibit J" and made part hereof.

21. On November 12th, 16th, and 19th, 1920 your petitioner was again arraigned before Honorable Rufus E. Foster, Judge of this Court sitting as Committing Magistrate and after a hearing was remanded to the custody of the said Marshall to await the action of the Secretary of State, and the said Honorable Rufus E. Foster, as Committing Magistrate under date of February 4th, 1911 issued his warrant therefor to the said Marshal and certified the evidence and the Testimony taken before him to the Secretary of State, the said certificate being marked "Exhibit K" and made part hereof.

22. The Secretary of State declined to honor the said certificate as appears by his letter dated April 20th, 1921, hereto annexed marked "Exhibit L" and made part hereof.

23. Subsequently there was another hearing on petitioner's application for a Habeas Corpus before Honorable W. I. Grubb, sitting as Judge of the United States District Court in New Orleans resulting in "judgment in the words and figures following to-wit:

"In the Matter of the Application of CHARLES GLENN COLLINS for Writ of Habeas Corpus and Certiorari.

Judgment on Rehearing.

Whereas under date of February 21st, 1919, a judgment was rendered herein denying relator's application for habeas corpus insofar as the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza is concerned, but as to the commitment

based on the charge of obtaining property by false pretenses from Pohoomul Brothers and from Ganeshi Lall & Sons, the writs were granted and relator remanded to await further proceedings in said last two named affidavits, and as to said two affidavits, this
9 cause was remanded to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana, and whereas it has been brought to the attention of the Court, that under said order remanding, no examination has been held, but on the contrary that the prosecution under said affidavits has been definitely abandoned by the British Consul General, and other affidavits have been filed by said British Consul General.

It is now adjudged and decreed that as to the commitment of relator to await the action of the President of the United States on the application of relator to answer the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza, relator's application for habeas corpus be denied and relator is remanded to the custody of Victor Loisel, U. S. Marshal, for the Eastern District of Louisiana, and it is further ordered, adjudged and decreed that as to the commitment based on the charge of obtaining property by false pretenses from Pohoomull Brother- and on the charge of obtaining property by false pretenses from Ganeshi Lall & Sons, the writs of habeas corpus are granted; and as to the two latter commitments and the charges on which they are based; the prisioner is discharged.

Given this 25th day of October, 1921. (Signed.) W. I. Grubb, District Judge."

24. Petitioner appealed from the said judgment to the Honorable the Supreme Court of the United States as appears from proceedings entitled "Chas. Glen Collins vs. Victor Loisel, United States Marshal etc., No. 672 of the docket, October Term 1921", of the said Court in which the judgment above referred to was "Affirmed," on May 29th, 1922.

25. On June 28th, 1922 your petitioner was called before the said Honorable Rufus E. Foster, as Committing Magistrate, for a hearing on the said two affidavits of April 8th, 1922, hereinabove referred to under which petitioner is now in the custody of said Mar-
10 shal; that upon being so called and before proceeding with the said hearing petitioner objected thereto and moved the said Committing Magistrate to dismiss the said proceedings and discharge petitioner from custody on the ground and for the reasons set out in his said motion which is in words and figures as follows, to-wit:

United States District Court, Eastern District of Louisiana.

No. 16933.

In re Extradition of CHARLES GLEN COLLINS.

Motion to Dismiss.

Now comes Charles Glen Collins whose extradition is sought in these proceedings and moves the Court to quash the affidavits filed herein, to dismiss the proceedings against him and to discharge him from custody on the ground and for the reason that in proceedings entitled In Re Extradition of Charles Glen Collins, Nos. 15927; 15922 and 15936 (Consolidated) of his Honorable Court identical affidavits on the same causes of action were made and filed by the same Government, to-wit; the Government of Great Britian, that after a hearing and in due time an order was entered in the said proceedings committing him the said Collins, to be extradited on the said charges and affidavits; that thereafter Mover herein applied for and obtained a writ of habeas corpus from the said order of commitment the same being entitled U. S. Ex rel. Charles Glen Collins vs. Frank M. Miller, United States Marshal, No. 15959 of the docket of the United States District Court, for the Eastern District of Louisiana; that in due time, to-wit: on the 25th day of October 1921 a judgment was rendered granting the writ of habeas corpus as to and on and from the charges and affidavits identical with those in these proceedings and Mover herein, to-wit: Charles Glen Collins was discharged from custody thereon which said judgment was affirmed on appeal by the United States Supreme Court in proceedings entitled Charles Glen Collins vs. Victor Loisel, United States Marshal, No. 672 of the Docket (October Term 1921) of the said Supreme Court of the United States.

11 Wherefore, the said Charles Glen Collins prays that this motion be granted and that the affidavits herein be quashed, the proceedings dismissed and he be discharged from custody, and for all general and equitable relief."

26. Your petitioner's detention and imprisonment are illegal and unconstitutional, because;

(*a*) The Honorable Rufus E. Foster, Judge sitting as Committing Magistrate, had, prior to the application for the writ of Habeas Corpus reached and announced his conclusion or finding that the record justified the extradition of petitioner on the three affidavits then before him, in which was included the subject matter of the two affidavits by Charles Braithwaite Wallis, British Consul General, now under consideration, the finding on which is herein complained of as hereinabove set out, and the said Foster, Judge, sitting as Committing Magistrate, had certified his findings to the Secretary of State, and said Foster, Judge, sitting as Committing Magistrate, had by reason thereof been ousted of jurisdiction of the subject matter,

and of the right to hear or try the said affidavits, or other affidavits founded upon the same alleged facts.

(*b*) Under the judgment of Honorable W. I. Grubb, District Judge, rendered on October 25th, 1921, hereinabove referred to and which was affirmed by the Honorable the Supreme Court of the United States as hereinabove set out your petitioner was discharged from custody under charges and affidavits identical with those under which said Rufus E. Foster, Committing Magistrate, has or-
12 dered petitioner incarcerated, imprisioned and detained, and under which petitioner is in fact held and deprived of his liberty by the said United States Marshal.

27. Your petitioner is advised and verily believes it to be true and therefore alleges, that his imprisonment and detention aforesaid is illegal and unconstitutional and that the Honorable Rufus E. Foster was without jurisdiction to commit him to the custody of the Marshal to await the action of the Secretary of State, as aforesaid, for the reasons aforesaid, and that your petitioner has been and is being deprived of his liberty without due process of law, in violation of the said treaty, and also in violation of the Fifth Amendment to the Constitution of the United States of America.

Wherefore, in order that your petitioner may be relieved of his unlawful detention and imprisonment, your petitioner prays that writs of habeas corpus and certiorari may issue out of this Court, directed to Victor Loisel, United States Marshal for the Eastern District of Louisiana, who has your petitioner in custody and to the said Honorable Rufus E. Foster, commanding them, and each of them, to produce the body of your petitioner before this Court, and to return all the proceedings had against him to this Court, and to do and receive what shall then and there be considered in the matter.

No previous application has been made for the said writs. (Signed) J. Zach. Spearing, (Signed) Roland B. Howell, Attorneys for Petitioner. (Signed) Charles Glen Collins.

13 STATE OF LOUISIANA,
City of New Orleans, ss:

Before the subscriber, a Notary Public in and for said City and State, personally appeared Charles Glen Collins, who being duly sworn deposes and says:

That he is the petitioner herein; that he has read and known the contents of the foregoing petition, and that the same is true of his knowledge, except as to the matter therein stated to be alleged upon information and belief, and as to that matter he believes it to be true. (Signed) Charles Glen Collins.

Sworn to before me, this 14th day of September, 1922. (Signed) J. Zach. Spearing, Notary Public. (Seal.)

Order.

Let the writs of Habeas Corpus & Certiorari issue, as prayed for, and according to law, returnable on the 19th day of September 1922, and

Let the United States Marshal produce the body of Charles Glen Collins in Court that day.

New Orleans, September 15th, 1922. (Signed) Geo. Whitfield Collins in Court that day.

14 **Writ of Habeas Corpus.**

(Issued September 15/22.)

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

No. 17063.

[Title omitted.]

The President of the United States to Victor Loisel, United States Marshal for the Eastern District of Louisiana, Greeting:

You are hereby commanded to bring and produce before this Court on 19th day of September, 1922, at 10 A. M., the body of Charles Glen Collins, now in your custody in the Parish Prison of the City of New Orleans, together with the cause of his caption and detention; there to abide what shall be awarded by the Court in the premises, and herein fail not under penalty of the law.

Witness, the Honorable Rufus E. Foster, Judge of said Court, at New Orleans, La., this 15th day of September in the year of our Lord one thousand nine hundred and twenty-two. (Signed) H. J. Carter, Clerk. (Seal.)

Clerk's Office. A true copy. (Signed) H. J. Carter, Clerk. New Orleans, La., Sept. 15th, 1922.

P. S.—A certified copy of the petition for writ of habeas corpus and the order thereon accompany this writ of habeas corpus.)

Marshal's Return, filed September 16, 1922.—Received by U. S. Marshal, New Orleans, La., September 15, 1922, and on the same day, month and year I served copy hereof together with copy of accompany- petition on Victor Loisel, U. S. Marshal, by handing same to him in person. T. I. Galbreth, Deputy U. S. Marshal.

Judgment.

[Filed December 6, 1922.]

[Title omitted.]

United States District Court, Eastern District of Louisiana.

No. 17063.

Judgment.

This cause came on this day to be heard upon the application of Charles Glen Collins, relator, for a writ of habeas corpus herein.

Present: J. Zach Spearing and Roland B. Howell, Esqs., Attorneys for the relator, and the relator, Charles Glen Collins, in person.

Present: Robert H. Marr, Esquire, attorney for the respondent;

Whereupon, after hearing arguments of counsel for the respective parties, and on due consideration thereof, it is now ordered by the Court that the alternative writ of habeas corpus heretofore issued herein be recalled, that the application of relator for a writ of heabeas corpus herein be denied that the petition of the relator herein be dismissed at his costs, and that the said relator, Charles Glen Collins, be remanded to the custody of Victor Loisel, United States Marshal for the Eastern of Louisiana.

Thus done and signed in open Court on this 6th day of December, A. D. 1922. (Signed) W. I. Grubb, Judge.

Petition and Order of Appeal.

[Filed January 9, 1923.]

United States District Court, Eastern District of Louisiana.

No. 17063.

[Title omitted.]

Petition & Order of Appeal.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

The petition of Charles Glen Collins, applicant in the above entitled and numbered proceedings for writs of habeas corpus and certiorari, respectfully represents:

That there is error to his prejudice in the judgment rendered and signed in these proceedings on the 6th day of December 1922 and

at petitioner is aggrieved thereby and desires to take an appeal the Honorable the Supreme Court of the United States with superdeas; that petitioner has prepared and files herewith his assignent of error and is ready and prepared to furnish a bond with good d solvent surety in such amount as the Court may order conditoned as the law directs, for the payment of damages and costs of peal and for any other penalty that may be inflicted or named.

Wherefore, petitioner prays that he be granted an appeal from e judgment rendered and signed in these proceedings on the 6th y of October 1922 returnable to the Honorable the Supreme Court the United States within the time and in the manner pointed out law upon petitioner furnishing a bond for such amount as may ordered by this court conditioned as the law directs and for the yment of damages and costs of appeal or any other penalty that ay be inflicted or named; and that citation of appeal issue. igned) Charles Glen Collins. J. Zach. Spearing, R. B. Howell, tys.

Presented this 4th day of January, 1923. (Signed) W. J. Grubb, strict Judge.

Order.

The above and foregoing petition of Charles Glen Collins, prayg that he be allowed to appeal to the Supreme Court of the United ates from the Judgment and decree rendered and signed in these oceedings on the 6th day of December 1922 and that a certified py of the transcript of the record upon the said order and decree transmitted to the Supreme Court of the United States, and the urt being of the opinion that the said Charles Glen Collins is titled to the appeal as prayed for by him.

It is ordered, that an appeal to the Supreme Court of the United ates from the Judgment and decree rendered and signed in these oceedings on the 6th day of December 1922 be and the same hereby allowed and that a certified *and that a certified* transcript the record of all the proceedings herein and of the returns and eadings in this case duly authenticated by forthwith transmitted the Supreme Court of the United States.

It is further ordered, that the bond of appeal conditioned as the w directs and for the payment of damages and costs of appeal, or y other penalty that may be inflicted or named, be and the same hereby fixed at the sum of Five Hundred and 00/100 ($500.00) llars and that a stay of procedure upon the said Judgment and ree appealed from be and the same is hereby granted.

This 4th day of January, 1923. (Sgd.) W. I. Grubb, District dge.

18 **Assignment of Errors.**

[Filed January 9, 1923.]

United States District Court, Eastern District of Louisiana.

No. 17063.

[Title omitted.]

Assignment of Errors.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

Now comes Charles *Charles* Glen Collins, petitioner herein, by J. Zach. Spearing and Roland B. Howell, his attorneys, and makes and files the following assignment of errors which he alleges occurred upon the hearing herein and in the entry of the judgment or decree in these proceedings from which the said Charles Glen Collins has taken an appeal and upon which assignment of errors he will rely in the prosecution of his appeal herein.

1st. The Court Erred in dismissing the writ of Habeas Corpus.

2nd. The Court Erred in holding that petitioner was lawfully held in custody by the Marshal of the United States for the Eastern District of Louisiana, to await the action of the Department of State of the United States upon the application to extradite him to the City of Bombay in British India.

3rd. The Court Erred in holding that petitioner was lawfully held, imprisoned and restrained of his liberty by the Marshal of the United States for the Eastern District of Louisiana and was not entitled to be discharged therefrom.

4th. The Court Erred in not holding that because the Honorable Rufus E. Foster, Judge, sitting as Committing Magistrate had, prior to the present application for the writ of Habeas Corpus reached and announced his conclusion or finding that the record justified the extradition of petitioner on the three affidavits then before him, in

19 which were included the subject matter of the two affidavits by Charles Braithwaite Wallis, British Consul General, now under consideration, the finding on which was complained of in these proceedings and application for a writ of Habeas Corpus and the said Foster, Judge, sitting as Committing Magistrate had previously certified his findings to the Secretary of State, the said Foster, Judge, sitting as Committing Magistrate, had by reason thereof been ousted of jurisdiction of the subject matter and of the right to hear or try the said affidavits, or other affidavits founded upon the same alleged facts.

5th. The Court erred in not holding that because under the judgment of Honorable W. I. Grubb, District Judge, rendered on October 25th, 1921, in proceedings entitled "United States ex rel. Charles Glen Collins vs. Frank M. Miller (Victor Loisel, substituted), U. S.

Marshal, No. 15959 of the docket of the United States District Court, Eastern District of Louisiana, and No. 672 October Term 1921, of the Docket of the Supreme Court of the United States" and which was affirmed by the Honorable the Supreme Court of the United States, your petitioner was discharged from custody under charges and affidavits identical with those under which said Rufus E. Foster, Committing Magistrate, has ordered petitioner incarcerated, imprisoned and detained, such imprisonment and detention was and is illegal and unconstitutional.

6th. The Court erred in not holding that because of the various and numerous errors hereinabove set forth, petitioner's imprisonment and detention aforesaid are illegal and unconstitutional and that the Honorable Rufus E. Foster was without jurisdiction to commit him to the custody of the Marshal to await the action of the Secretary of State, as aforesaid, and that your petitioner has been, and is being deprived of his liberty without due process of law, in violation of the said treaty, and also in violation of the Fifth Amendment to the Constitution of the United States of America.

20 And petitioner, Charles Glen Collins, prays that the judgment and decree made and rendered herein on the 6th day of December, 1922 for the errors aforesaid and for other er-ors in the record and proceedings herein may be reversed and set aside and that petitioner be restored to all things which he lost or has lost by reason of the said judgment and that the United States District Court for the Eastern District of Louisiana be directed to enter in favor of petitioner a judgment and decree maintaining the writ of Habeas Corpus issued in these proceedings and discharging petitioner from the custody of the Marshal of the United States for the Eastern District of Louisiana and restoring petitioner to his liberty. (Signed) Charles Glen Collins. J. Zach. Spearing, R. B. Howell, Attys.

Presented January 4th, 1923. W. I. Grubb, District Judge.

21 **Appeal Bond.**

[Filed January 9, 1923.]

United States District Court, Eastern District of Louisiana.

No. 17063.

[Title omitted.]

Bond.

Know all men by these presents, That We, Charles Glen Collins, as principal, and United States Fidelity & Guaranty Company, as Surety, are held and firmly bound unto Victor Loisel, U. S. Marshal and Harry J. Carter, Clerk of the United States District Court, both of the Eastern District of Louisiana, and any and all others concerned in the full and just sum of Five Hundred and

00/100 ($500.00) dollars to be paid to the said parties or any of them, their certain attorney executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of December in the year of our Lord, one thousand nine hundred and twenty two.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit pending in said Court, entitled "United States Ex Rel.—Charles Glen Collins vs. Victor Loisel, U. S. Marshal, No. 17063" a judgment was rendered against the said Charles Glen Collins and the said Charles Glen Collins having obtained an order of appeal and filed a copy thereof in the Clerk's office, of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to
22 Victor J. Loisel, U. S. Marshal for the Eastern District of Louisiana citing and admonishing him to be and appear before the United States Supreme Court to be holden at Washington, District of Columbia within 30 days from the date thereof.

Now, the condition of the above obligation is such that if the said Charles Glen Collins shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue. (Signed) Charles Glen Collins, United States Fidelity & Guaranty Co., by (Signed) George M. Bernard, Attorney-in-fact. (Seal.)

Signed sealed and delivered in presence of J. Zach. Spearing.

Approved: Jan. 4/23. (Signed) W. I. Grubb, District Judge.

23 **Præcipe for Transcript.**

[Filed January 25, 1923.]

United States District Court, Eastern District of Louisiana.

No. 17063.

[Title omitted.]

Præcipe.

The Clerk of the United States District Court for the Eastern District of Louisiana is hereby directed in making up the transcript of appeal for the Supreme Court of the United States, to include therein the following, to wit:

First. The petition of Charles Glen Collins for writs of habeas corpus and certiorari, together with the order thereon.

Second. The writ and the return thereon.

Third. The judgment rendered in the case.

Fourth. The petition and order of appeal.
Fifth. The bond of appeal.
Sixth. The assignment of errors.
Seventh. The citation of appeal and the return thereon.
Eighth. The two affidavits or complaints of Charles Braithwaite Wallas, Esq., British Consul General at the City of New Orleans, State of Louisiana, filed in proceedings entitled "In re Extradition of Charles Glen Collins, No. 16933 of the Docket of the United States District Court, for the Eastern District of Louisiana."
Ninth. The warrant issued by Hon. Rufus E. Foster, United States District Judge, dated April 6, 1922, issued in the said proceedings No. 16,933, and the Marshal's return thereon.
Tenth. The objection filed by Charles Glen Collins on June 28, 1922 in said proceedings No. 16933, to the want of jurisdiction of the said Honorable Rufus E. Foster, Judge, sitting as Com-
24 mitting Magistrate to hear or determine the questions raised in those proceedings and moving the said Committing Magistrate to dismiss the said proceedings and discharge the said Charles Glen Collins from custody on the grounds and for the reasons set out in said objection and motion.
Eleventh. The note of evidence taken on said objection and motion in said proceedings No. 16933 on June 28, 1922.
Twelfth. The order granted by the Hon. Rufus E. Foster, Judge, sitting as Committing Magistrate in said proceedings No. 16933 on August 26th, 1922, remanding Charles Glen Collins to the custody of the United States Marshal to await the action of the Secretary of State.
Thirteenth. The certificate of the Hon. Rufus E. Foster, Judge, sitting as Comitting Magistrate, dated August 26, 1922, certifying the evidence and estimony taken in said proceedings No. 16933, to Secretary of State.
Fourteenth. Commitment & M. R. in 16933.
New Orleans, January, 25th, 1923. (Signed) J. Zach. Spearing, Rolland B. Harell, Attys. for Charles Glen Collins.

25 **Agreement as to Transcript of Appeal.**

[Filed January 25, 1923.]

United States District Court, Eastern District of Louisiana.

No. 17063.

[Title omitted.]

Agreement as to Transcript of Appeal.

It is agreed by counsel for Charles Glen Collins, appellant, and Victor Loisel, Appellee, that in making up the transcript the Clerk of Court shall omit therefrom
First. The matters contained in proceedings entitled Charles Glen Collins, Appellant vs. Frank M. Miller, United States Marshal No.

977 and Tom F. Carlisle, British Consul General, Appellant, vs. Charles Glen Collins, No. 978 October Term 1918 of the Supreme Court of the United States reprinted and filed in the record in:—Charles Glen Collins, Appellant, vs. Victor Loisel United States Marshal for the Eastern District of Louisiana, No. 672, October Term 1921 of the Supreme Court of the United States.

Second. The matters contained in proceedings entitled Charles Glen Collins, Appellant vs. Victor Loisel United States Marshal, No. 672, October Term of the Supreme Court of The United States.

It is agreed that in lieu of having matters and documents contained in the two above mentioned records copied by the Clerk of the United States District Court for the Eastern District of Louisiana in the transcript of appeal, the printed records of the two above mentioned cases shall be forwarded by the Clerk of the said United States District Court for the Eastern District of Louisiana and the said two printed records shall stand in lieu and take the place of having the documents therein copied and included in the transcript of appeal in this case and that the said two printed records may be reprinted as a part of the record of the present appeal,
26 the same as though all of the matters contained in the said printed record were copied in the said transcript of appeal.

New Orleans, January 25th, 1923. (Signed) J. Zach. Spearing, Atty. for C. G. Collins. (Signed) Robert H. Marr, for Victor Loisel.

27 **Petition of Charles Glen Collins for and Order Extending Time.**

[Filed February 1, 1923.]

United States District Court, Eastern District of Louisiana.

[Title omitted.]

The petition of Charles Glen Collins, appellant in the above entitled and numbered cause, respectfully represents:

That as appears from the certificate of the Clerk of this Honorable Court, which is hereto annexed and made part hereof, the said Clerk is unable to prepare the transcript of appeal in time to have the same filed within thirty days from January 4, 1923, the date on which the appeal was granted to petitioner herein, appellant in the case, because as shown by said certificate, certain documents, which must be copied in the transcript of record of appeal, are presently in the office of the Secretary of State of the United States, at Washington, District of Columbia, and that it is necessary to obtain an extension or an enlargement of thirty (30) days from February 3rd, 1923, within which to complete the said record or transcript of appeal.

Wherefore petitioner and appellant prays that the time for filing the record or transcript of appeal be extended or enlarged to thirty (30) days from and after February 3, 1923, and for all equitable and general relief. (Signed) J. Zach. Spearing, Atty.

Order.

Considering the foregoing and the certificate of the Clerk, which is annexed hereto, let the time for filing the transcript or record of appeal in this case in the Supreme Court of the United States be and the same is hereby extended to thirty (30) days from and after February 3, 1923. January 30th, 1923. (Signed) W. I. Grubb, Judge.

28 United States District Court, Eastern District of Louisiana, New Orleans, La., January 25th, 1923.

[Title omitted.]

Clerk's Certificate.

Clerk's Office.

I, H. J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana do hereby certify that Charles Glen Collins, the Relator in the above entitled and numbered case, on the 4th day of January 1923, was allowed an appeal to the Supreme Court of the United States.

I further certify that on September 7, 1922, the original record in the case entitled "In the matter of Extradition Proceedings versus Charles Glen Collins" No. 16,933 of the Docket of this Court, was sent by registered mail to the Hon. Secretary of State, Washington, D. C., for his action in the premises; and that certain of the documents contained in the said case No. 16,933, should be incorporated in the transcript of the record on appeal in the said case No. 17,063, entitled "United States, ex rel. Charles Glen Collins versus Victor Loisel, U. S. Marshal; and that therefore, I will be unable to have the transcript of record completed by the 3rd day of February, 1923, the return day herein;

I further certify that an extension of time, say thirty (30) days from February 3rd, 1923, will be necessary for the completion of said transcript of record.

Witness my hand, and the seal of the said Court, at New Orleans, La., this 25th day of January, A. D. 1923. (Signed) H. J. Carter, Clerk. (Seal.)

29 United States of America:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Clerk's Office.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand, and the seal of the said Court, at New Orleans, Louisiana, this 1st day of February A. D. 1923. (Signed) H. J. Carter, Clerk. (Seal.)

30 Affidavit of Charles Braithwaite Wallis, His Britannic Majesty's Consul General.

[Filed April 6th, 1922, in Case No. 16,933.]

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans:

Before me, the undersigned authority, personally came and appeared Charles Braithwaite Wallis, who being by me first duly sworn, deposed and said that he is His Britannic Majesty's Consul General for the Southern States, namely Louisiana, Alabama, Mississippi and Florida; that he is informed and being so informed, verily believes that Charles Glen Collins having committed the crime of obtaining property by false pretences, stands charged in the Chief Presidency Magistrate's Court at Bombay, India, with having, on or about February 7th, 1917, fraudulently, feloniously and falsely pretended to the commercial firm of Pohoomul Bros., the he, the said Collins, was a wealthy man; that he, the said Collins, then and there had a right to draw a draft for Five Thousand Pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London, and that in consequence thereof, said draft would be paid; Whereas, in truth and in fact, the said Collins was not then and there a wealthy man but on the contrary was a bankrupt; that he, the said Collins, had not the right to draw a draft for five thousand Pounds on said Messrs. E. Curtice & Company, and then and there well knew that said draft would not be paid; that by means of said false fraudulent and felonious pretences, the said Collins then and there obtained from said commercial firm of Pohoomul Bros., a pearl necklace valued at seventy-five thousand rupees of the property of the said Commercial firm of Pohoomul Bros.; that the said false and fraudulent pretences were, to the knowledge of said Collins at the time of making them false and fraudulent, and affiant further says that the said Collins is presently within the City of New Orleans, and within the juris-
31 diction of the Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further states that the source of his information and belief, upon which information and belief this affidavit is made, is as follows:

The evidence taken on said charge in the Esplanade Police Court, Bombay, duly certified to under the provisions of Section 5271 of the Revised Statutes of the United States; the evidence taken before Sir John Dickinson, Knight, Bow Street Police Court London, duly certified under Section 5271 of the Revised Statutes of the United States; the evidence taken before Alexander Stuart Duff Thompson, at Glasgow, salaried sheriff of the Sheriffdom of Lanarkshire, duly certified to under the Section 5271 of the Revised Statutes of the United States, all of which said evidence is hereunto annexed as part

hereof; and a telegram in Code from his Britannic Majesty's Principal Secretary of State for Foreign Affairs, received by his Britannic Majesty's Consul General at New York on November 3rd, 1917, a Code Translation whereof is hereto annexed as part hereof. (Signed) Braithwaite Wallis, Major. H. B. M. Consul General. (Seal.) (His Britannic Majesty's Consul General.)

Sworn to and subscribed before me this 3rd day of April, 1922. (Signed) Rufus E. Forster, Judge.

32 **Affidavit of Charles Braithwaite Wallis, His Britannic Majesty's Consul General.**

[Filed April 6th, 1922, in Case No. 16933.]

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Charles Braithwaite Wallis, who being by me first duly sworn, deposed and said that he is His Britannic Majesty's Consul General for the Southern States, namely Louisiana, Alabama, Mississippi and Florida; that Charles Glen Collins, having in British India committed the crime of obtaining goods by false pretences, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having on or about February 19th, 1917, fraudulently, falsely and feloniously pretended to the commercial firm of Ganeshi, Lall & Sons, carrying on business at Agra, Simla and Calcutta, India, that he, the said Collins, was a wealthy man, a partner in the firm of William Collins Sons & Company, of Glasgow, London; that he was a Colonel in the Howe Battalion of the Royal Naval Division; and was then on six months' leave; that he, the said Collins, then and there had the right to draw a draft for two thousand pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London; that the said E. Curtice & Company were bankers; that he, the said Collins, as a man of wealth, was amply entitled to an additional credit of two thousand pounds. Whereas in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary was a bankrupt; that he was not and never had been a partner in the firm of William Collins Sons & Company; that he was not a Colonel in the Howe Battalion of the Royal Naval Division, and was not then and there on six months' leave; that he, the said Collins, had no right to draw a draft for two thousand pounds, or for any amount, on said Messrs. E. Curtice & Company; that the said E. Curtice &
33 Company were not bankers; that the said Collins was not entitled to an additional credit of Two Thousand pounds, or to any credit whatsoever; that by means of said false fraudulent and felonious pretences, said Collins then and there obtained from said commercial firm of Ganeshi, Lall & Sons, one emeral- and diamond necklace, five emeralds; one star ruby and three sapphires, of the

price and value of four thousand five hundred pounds, of the property and goods of said Ganeshi, Lall & Sons; which said pretences were to the knowledge of said Collins, at the time of making same, false and fraudulent; and affiant further says that said Collins is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins. (Signed) Braithwaite Wallis, Major. H. B. M., Consul General. (Seal His Britannic Majesty's Consul General.)

Sworn to and subscribed before me this 3rd day of April, 1922. (Signed) Rufus E. Foster, Judge.

34 **Commitment & Marshal's Return.**

[Filed April 8th, 1922, in Case No. 16933.]

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division, ss.

To the Marshal of the Eastern District of Louisiana or either of his Deputies and the Keeper of either of the Gaols in said District, Greeting:

These are, in the name of the President of the United States of America, to command you, the said Marshal or Deputies, and each of you, forthwith to convey and deliver into the custody of the Keeper of the House of Detention for the Parish of Orleans, State of Louisiana, the body of Charles Glen Collins as directed by order rendered this day in these proceedings; said proceedings having been brought for his extradition to British India for trial on charges pending against him before the Chief Presidency Magistrate's Court at Bombay, India, as set out in the complaining affidavits herein.

And you the said Keeper, in the name of the President of the United States of America, aforesaid, are hereby commanded to receive the said Charles Glen Collins, into your custody, in said House of Dentention and him there safely to keep or be otherwise discharged in due course of law until the further orders of the Court.

Hereof fail not at your peril.

Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, this 6th day of April in the year of our Lord one thousand nine hundred and twenty-two. (Signed) Rufus E. Foster, Judge U. S. District Court, E. D. of La. (Seal.)

Received by U. S. Marshal, New Orleans, La., April 8, 1922, and on the same day, month and year before the defendant was imprisoned as herein directed he appeared before the Clerk of the U. S. District Court and executed a bond for his appearance before the Hon.

U. S. District Court for the Eastern District of Louisiana from day to day and term to term pending further trial herein, and I was directed to release said defendant; this writ is returned accordingly. Victor Loisel, U. S. Marshal, by T. I. Galbreth, Deputy U. S. Marshal.

35 United States District Court, Eastern District of Louisiana.

No. —.

In re Extradition of Charles Glen Collins.

Motion of Charles Glen Collins to Quash Affidavits.

[Filed 6/28/22, in Case No. 16933.]

Now comes Charles Glen Collins whose extradition is sought in these proceedings and moves the Court to quash the affidavits filed herein, to dismiss the proceedings against him and to discharge him from custody on the ground and for the reason that in proceedings entitled In Re Extradition of Charles Glen Collins, Nos. 15827; 15928 and 15936 (Consolidated) of this Honorable Court identical affidavits on the same causes of action were made and filed by the same Government, to-wit; the Government of Great Britian, that after a hearing and in due time an order was entered in the said proceedings committing him the said Collins, to be extradited on the said charges and affidavits; that thereafter Mover herein applied for and obtained a writ of habeas corpus from the said order of commit*tt*ment the same being entitled U. S. Ex Rel. Charles Glen Collins vs. Frank M. Miller, United States Marshal, No. 15959 of the docket of the United States District Court for the Eastern District of Louisiana; that in due time, to-wit: on the 25th day of October, 1921 a judgment was rendered granting the writ of habeas corpus as to and on and from the charges and affidavits identical with those in these proceedings and Mover herein, to-wit: Charles Glen Collins was discharged from custody thereon which said judgment was affirmed on appeal by the United States Supreme Court in proceedings entitled Charles Glen Collins vs. Victor Loisel, United States Marshal, No. 672 of the Docket (October Term 1921) of the said Supreme Court of the United States.

Wherefore, the said Charles Glen Collins prays that this motion be granted and that the affidavits herein be quashed, the proceedings dismissed and he be discharged from custody, and for all general and equitable relief. (Signed) Charles Glen Collins. (Signed) J. Zach. Spearing, Atty.

36 **Note of Evidence on Motion of Charles Glen Collins to Quash the Affidavits and Discharge Him, Taken on June 28, 1922.**

[Filed January 25, 1923.]

United States District Court, Eastern District of Louisiana.

No. 16933.

In re Extradition of CHARLES GLEN COLLINS.

Note of Evidence on Motion of Charles Glen Collins to Quash the Affidavits and Discharge Him, Taken on June 28th, 1922.

Present: Robert H. Marr, for British Government (Petitioners); J. Zach. Spearing, for Charles Glen Collins.

By Mr. Spearing: I offer in evidence the entire record and all the proceedings in the matter entitled in re Extradition of Charles Glen Collins. Nos. 15927, 15928 and 15936 (Consolidated) of the United States District Court, Eastern District of Louisiana.

Also the entire record and proceedings in the matter entitled U. S. ex rel. Charles Glen Collins vs. Miller, U. S. Marshal, No. 15959 of the docket of the United States District Court, Eastern District of Louisiana, and now bearing No. 672 (October Term 1921) of the docket of the Supreme Court of the United States, and particularly the judgment rendered by the District Court on October 25, 1921 and the opinion and decree of the Supreme Court of the United States, affirming the same.

37 United States District Court, Eastern District of Louisiana.

No. 16933.

[Title omitted.]

Order of Commitment.

[Filed August 26th, 1922.]

This cause came on to be heard at a former day upon requisition of Charles Braithwaite Wallis, His Britannic Majesty's Consul General, that Charles Glen Collins be committed for the purpose of being delivered up as a fugitive from justice, pursuant to the provisions of the treaty made between the United States and Great Britain, August 9, 1842, and subsequent additional conventions, and after hearing the evidence and testimony offered on behalf of the respective parties, and arguments of counsel, the cause was submitted, when the Court took time to consider; the said Consul General being

represented by Robert H. Marr, Esq., as counsel, and the defendant Charles Glen Collins, being present at said hearing and represented by J. Zach. Spearing, Esq., as his counsel;

Whereupon, and on due consideration of said evidence and testimony, I find and adjudge that the evidence produced against the said Charles Glen Collins is sufficient in law to justify his commitment on the charge of having obtained property by false pretenses.

It is therefore ordered, adjudged and decreed that the said Charles Glen Collins be committed to the House of Detention for the Parish of Orleans, State of Louisiana, to be held for extradition, to British India for trial on the charges pending against him in the Chief Presidency Magistrate's Court at Bombay, India, and to abide the order of the President of the United States in the premises until further orders of the Court. August 26th, 1922. (Signed) Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana.

38 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

United States District Court, Eastern District of Louisiana.

No. 16933.

In the Matter of CHARLES GLEN COLLINS.

Certificate of Judge.

[Filed August 26, 1922.]

I, Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana, being duly authorized to issue warrants for the extradition of fugitives from justice of foreign governments, do hereby certify that, pursuant to complaints of Charles Braithwaite Wallis, His Britannic Majesty's Consul General, duly made on oath, charging Charles Glen Collins with having committed the crime of obtaining property by false pretenses from Pehoomul Bros. and Ganeshi, Lall & Sons, within the jurisdiction and government of British India, and with being a fugitive from justice of said country, on April 6th, 1922, I issued a warrant for the commitment of the said Charles Glen Collins to the House of Detention for the Parish of Orleans, State of Louisiana, pending the examination and hearing upon said charges, and, on April 8th, 1922, I issued an order to release the said Charles Glen Collins upon a bond in the sum of ten thousand ($10,000.00) dollars, which was furnished by him on the same day, and that said examination and hearing was held on the 28th day of June, A. D., 1922, Robert H. Marr, Esq., appearing as counsel for the British Government, and J. Zach Spearing, Esq., appearing as counsel for the defendant, and that I deem the evidence adduced before me sufficient to show a prima facie case to sustain the charges under the law, and the provisions of the treaty of extradition between the government of the

United States and that of the British Government, and that I have accordingly, on the 26th day of August, 1922, issued an order to commit the said Charles Glen Collins to the House of Detention for the Parish of Orleans, State of Louisiana, to await the order of the President of the United States in the premises;

39 I annex hereto the deposition of Udharn Partabrai, Lokumull Sahijran, John Dunstan Sherstan Baker and Arthur Fuller together with certificates of James A. Smith, Consul General for the United States of America, at Calcutta, India, A. H. Grant, Secretary to the Government of India in the Foreign and Political Departments, and Chunilal H. Setalvad, Acting Chief Presidency Magistrate, Bombay, India, and depositions of Brijmohanlal Lalla Ramkisondas, Dattatraya Ramchandra, and Arthur Fuller, together with certificates of James A. Smith, Consul General for the United States of America, at Calcutta, India, A. H. Grant, Secretary to the Government of India in the Foreign and Political Departments, and A. H. S. Aston, Chief Presidency Magistrate, Bombay, India, and depositions of John Richard Campbell Howie and Edward Curtice, together with certificates of Sir John Dickinson, Knight, Chief Magistrate of the Police Courts of Metropolis (London), J. W. Holderness, Under Secretary of State for India, and Sheldon Leavitt Crosby, Secretary of Embassy of United States, and depositions of James Paterson and Hugh Allan, together with certificates of J. W. Holderness, Under Secretary of State for India, Sheldon Leavitt Crosby, Secretary to Embassy of United States, John Lamb, Assistant Under Secretary for Scotland and A. Hirtzel, Assistant Under Secretary of State for India, which were heretofore filed in cases Nos. 15,927 15,928 and 16,382 of the docket of this Court, entitled "In the matter of extradition proceedings versus Charles Glen Collins", and the depositions of W. H. Smith and Charles Glen Collins, together with all exhibits and documents heretofore offered and filed in case No. 16,382 of the docket of this Court, entitled "In the matter of extradition proceedings versus Charles Glen Collins."

Witness my hand this 26th day of August, A. D. 1922. (Signed) Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana.

40 **Commitment & Marshal's Return Thereon.**

[Filed August 30th, 1922, in Case No. 16,933.]

UNITED STATES OF AMERICA,
Eastern District of Louisiana ss:

To the Marshal of the Eastern District of Louisiana or Either of his Deputies and the Keeper of Either of the Gaols in said District; Greeting:

These are, in the name of the President of the United States of America, to command you, the said Marshal or Deputies and each of you, forthwith to convey and deliver into the custody of the Keeper

of the House of Detention for the Parish of Orleans, State of Louisiana, the body of Charles Glen Collins, directed by order rendered this day in these proceedings, to be held for extradition to British India for trial on charges pending against him before the Chief Presidency Magistrates Court at Bombay, India, as set out in the complaining affidavits herein;

And you the said Keeper, in the name of the President of the United States of America, aforesaid are hereby commanded to receive the said Charles Glen Collins into your custody in said House of Detention, and him there safely to keep, or be otherwise discharged in due course of law, until the further orders of the Court.

Hereof fail not at your peril

Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, this 26th day of August, in the year of our Lord, one thousand nine hundred and twenty-two. (Signed) Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana.

(Marshal'- Return on P. #2.)

41 Marshal's Return Filed August 30th, 1922.

— August 28th, 1922, and on the same day, month and year, I delivered the body and person of the within named Charles Glen Collins, into the Custody and keeping of the Keeper of the House of Detention, at New Orleans, La., and within the walls of said prison. Victor Loisel, U. S. Marshal, By W. L. Brown Deputy U. S. Marshal.

42 **Clerk's Certificate.**

Clerk's Office.

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 41 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors and proceeding had in the case entitled United States, ex rel. Charles Glen Collins versus Victor Loisel, United States Marshal, No. 17063 of the docket of said Court, as made in accordance with the præcipe for transcript and stipulation of counsel copied therein.

Witness my hand and the seal of said court at the City of New Orleans, Louisiana, this 15th day of February, A. D., 1923. H. J. Carter, Clerk. [Seal of U. S. District Court for the Eastern Dist. of La.]

43 **Citation and Service.**

[Filed Jan. 15, 1923.]

THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Victor Loisel, United States Marshal for the Eastern District of Louisiana; Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and order of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein United States, ex rel. Charles Glen Collins, is Appellant, and Victor Loisel, U. S. Marshal for the Eastern District of Louisiana, is Appellee, in the cause wherein United States, ex rel. Charles Glen Collins, is Relator, and Victor Loisel, U. S. Marshal, et al., are defendants, No. 17,063 of the Docket of said Court, to show cause, if any there be, why the judgment rendered against the said United States, ex rel. Charles Glen Collins, Relator, as in said Petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Wm. I. Grubb, Judge of the United States District Court, at New Orleans, La., this 12th day of January in the year of our Lord one thousand nine hundred and twenty-three. (Signed) Wm. I. Grubb, Judge.

Clerk's Office. A true copy. H. J. Carter, Clerk. [Seal of U. S. District Court for the Eastern Dist. of La.] New Orleans, La., Jan. 13, 1923.

[File endorsement omitted.]

Received, U. S. Marshal, New Orleans, La., January 12, 1923, and on the same day, month and year I served the original of which this writ is a certified copy on Victor Loisel, U. S. Marshal, by handing same to him in person, in the City of New Orleans, Louisiana. Victor Loisel, U. S. Marshal, By T. Galbraith, Deputy U. S. Marshal.

43a TRANSCRIPT OF RECORD.

Supreme Court of the United States, October Term, 1921.

No. 672.

CHARLES GLEN COLLINS, Appellant,

vs.

VICTOR LOISEL, United States Marshal for the Eastern District of Louisiana.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

Filed December 31, 1921. (28,627.)

44 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

versus

FRANK M. MILLER, United States Marshal.

Appeal from the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to the Supreme Court of the United States, Returnable Within 30 Days from the 25th Day of November, 1921, at the City of Washington, D. C.

Appearances:

Messrs. J. Zach Spearing and Howell, Wortham & Howell, attorneys for Charles Glen Collins, Appellant.

Robert H. Marr, Esq., Attorney for Victor Loisel, U. S. Marshal for the Eastern District of Louisiana, Appellee.

TRANSCRIPT OF RECORD.

Agreement as to Transcript of Appeal.

[Filed Dec. 15, 1921.]

J. Zach Spearing, Lawyer, Masonic Temple, New Orleans, La.

United States District Court, Eastern District of Louisiana.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

F. M. MILLER.

Agreement as to Transcript of Appeal.

It is agreed by counsel for relator and respondent that this case was again heard by the United States District Court for the Eastern District of Louisiana upon the record as made up on the appeals from the judgment of the said Court, rendered on the 21st day of February, 1919, bearing Nos. respectively 27063 and 27064
of the Supreme Court of the United States, October Term,
45 1918, and likewise respectively numbers 977 and 978 on the docket of said Court.

That judgment was rendered on the second hearing on October 25, 1921, on the said record and upon the additional proceedings which took place before the said Court on October 24, 1921.

It is further agreed that the printed record under numbers 27063 and 27064 of the Supreme Court of the United States, October term 1918, shall form part of the record on the appeal from the judgment of October 25, 1921, and that the said printed record may be used in the Supreme Court upon the hearing of the present appeal and that if need, be, the said printed record may be reprinted as a part of the record of the present appeal, the same as though all of the matters contained in the said printed record were copied in the transcript of appeal from the judgment of October 25, 1921.

It is further understood and agreed that in addition to the printed record above referred to, the record on the present appeal shall consist of the following, to-wit:

First. This stipulation or agreement

Second. All proceedings, docket entries, minute entries and documents in this case since the making up of the transcripts of appeal from the judgment of February 21, 1919.

Third. The report of proceedings before the United States District Court for the Eastern District of Louisiana on October 24,

1921, including the letter from the Secretary of State, dated April 20, 1921, to the Clerk of the United States District Court for the Eastern District of Louisiana, which was read to the Court as part of the proceedings held therein on October 24, 1921, and which is referred to on page 13 of the said report.

Fourth. The petition and order of appeal.

Fifth. The bond of appeal.

Sixth. The assignment of errors.

Seventh. The citation of appeal and the return thereon.

It is further understood and agreed that either party may by præcipe or in any other manner bring up and have incorporated in the record any paper, document, entry, matter or thing which such party may, at any time, deem necessary or advisable to form part of the record.

New Orleans, December 15th, 1921. (Signed) J. Zach Spearing, Counsel for Relator. (Signed) Robert H. Marr, Counsel for Defendant.

46 [Filed Dec. 15, 1921.]

United States District Court, Eastern District of Louisiana.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

FRANK N. MILLER, U. S. Marshal.

Proceedings Had in Open Court.

Report of Proceedings Before the Hon. A. E. Grubb, Judge, on the 24th Day of October, 1921.

Appearances:

R. H. Marr, Esq., for the British Consul General.
Roland B. Howell, Esq., for Charles Glen Collins.
J. Zach Spearing, Esq., for Charles Glen Collins.

Mr. Marr: May it please the Court. I presume you know the history of this case just as well as I do. There were originally filed three affidavits, charging Charles Glen Collins with being a fugitive from justice from India. Colonel Collins presented himself as a witness in two of those cases, and Judge Foster refused to allow him to testify.

Subsequently, upon the trial of the other affidavit, the Judge did allow Colonel Collins to testify. He applied to your Honor for a writ of habeas corpus, and your Honor granted that writ in the two cases in which Colonel Collins did not give his evidence.

An appeal was taken to the Supreme Court of the United States, and the Supreme Court of the United States remanded the case on the theory that the litigation had not yet come to an end.

Matters came back to Louisiana in that shape, and then Judge Foster, having some doubt in his own mind as to how far your Honor had a right to remand to him the trial of these two cases on which Colonel Collins had not testified, I thought the best way to meet that difficulty was by proving new affidavits, setting up in those new affidavits exactly the same state of facts as was set up in the original affidavits.

On those affidavits Colonel Collins was tried and resulted—that trial resulted in Colonel Collins being remanded to the justice of India for trial.

The papers were then transmitted to the Secretary of State for his action, and the Secretary of State wrote me a letter in which he stated that he thought, in the present condition of the record, that he could not remand Colonel Collins to India; in
47 other words, he took the view that the case in Washington had not yet been decided, and so I think the real matter *matter* in controversy before your Honor today is whether or not Colonel Collins, now having been permitted to testify upon these affidavits which contain exactly the same recitals as the original affidavits, whether or not your Honor will now, under those two affidavits, issue a writ of habeas corpus, or whether that writ will be refused.

The Court: Let me understand this. Is Colonel Collins in custody of the Marshal now or is he out under bond?

Mr. Marr: He is out under bond.

The Court: Wouldn't that dispose of the habeas corpus proceedings, if he is out under bond?

Mr. Marr: That, of course, is theoretically true. A man who is out of the custody of an officer is not entitled to habeas corpus, because a habeas corpus enlarges him when, as a matter of fact—

The Court: What was the condition of the bond he gave; to present himself here? He is here now.

Mr. Marr: Why I don't know what the condition of the bond was. I think it was an ordinary every day appearance bond.

The Court: I suppose the judge who entertained the writ might possibly enlarge him on bond to hold himself at his disposal, ready to surrender himself to that judge.

Mr. Marr: As a matter of fact, Judge Foster didn't act as judge in this case at all. He acted as a committing magistrate or examining magistrate, and, under his power as examining magistrate, under those two affidavits, he refused to release Colonel Collins on writ of habeas corpus, and decided on those two affidavits he was a fugitive from justice and committed him to await the action of the United States authorities to turn him over to the authorities of British India.

The Court: And Judge Foster allowed him bond on that third affidavit?

Mr. Marr: After that hearing, he enlarged him on bond.

The Court: What is the condition of that bond; he is supposed to surrender himself——

Mr. Marr: I suppose the condition of that bond is to surrender himself to the authorities of India when called for. I presume that is the condition of the bond. I don't remember the amount of the bond, but Judge Foster released him on the bond.

The Court: What I don't understand is this: How in that condition can a habeas corpus lie, when he has been enlarged on bond and the condition of the bond is to surrender himself.

Mr. Marr: Of course the regular proceeding would have been for Colonel Collins to surrender himself and apply for a writ of habeas corpus, but as a matter of fact——

The Court: I don't care about the technicalities, but the Court has to have jurisdiction over the matter in some way.

Mr. Marr: The matter is this. Your Honor remanded him to be tried on these two new affidavits, and he was tried on these two new affidavits. Now the question for your Honor to decide is whether or not your Honor's instructions have been carried
48 out and a rehearing held on those two affidavits, whether or not Collins is entitled to be released on habeas corpus, just as much so as if your Honor—in other words, as if you had before you now the original application for writ of habeas corpus; because, under the decision of the Supreme Court of the United States, that has never been disposed of, your Honor having remanded the case for the purpose of allowing Colonel Collins to give his testimony, and, under that remand, Colonel Collins having given his testimony, the question for your Honor now to decide is, whether or not, under that remand and under the record as it is now presented to you, he is entitled to a writ of habeas corpus. On that construction, I don't think there is any necessity for applying for any writ at all, because it is simply going over the whole case as originally presented to your Honor. In other words, you have remanded the case for the specific——

The Court: Suppose he wanted to take the position now of questioning the sufficiency of the affidavits, would that affect the issuing of another writ of habeas corpus?

Mr. Marr: Yes; but he has not chosen to take that position, and I——

The Court: His having given bond, it seems to me, would prevent his suing out a new writ.

Mr. Marr: In equity, he cannot sue out a writ of habeas corpus when he is not in custody, because a writ of habeas corpus says you must produce the man's body in court to ascertain the cause of his detention. If he is not detained, of course such a writ will not run.

The Court: As I understand it, the only thing I can see is, if I can dispose of the original writ of habeas corpus——

Mr. Marr: Anyhow, the best way is to dispose of the application; that is the matter that is presented to your Honor.

Mr. Spearing: I cannot concur with my friend on the other side

as to any of his positions. I don't think that the question before the court is as stated by him. There is a clear distinction that must always be borne in mind, and that is, that Judge Foster, in acting in this case, never acted as District Judge, but merely as commissioner or committing magistrate, and therefore what Judge Foster did from the inception of this case to the present time was merely done as committing magistrate.

Your Honor sat before, and is sitting now, I assume, as District Judge. Nothing can be clearer than this, that the District Judge is not authorized to hear or receive evidence in an extradiction case. That must be heard by a commissioner. We concede that from his decision there is no appeal properly so called, but if the accused be committed to await the result of the action of the executive, then the accused has a right to apply to the District Judge for a habeas corpus.

Now that is what we did in this case. Upon that habeas corpus and the hearing before your Honor, a certain judgment was rendered. I read it, because I doubt if your Honor will remember the phraseology of it, though you will remember your conclusions, no doubt.

49 The Court: I think it would be wise to read it, because my recollection is not infallible.

Mr. Spearing: It is true that there were three affidavits, which were consolidated into one case. When Judge Foster issued his certificate of commitment for extradition, and forwarded the same to the Secretary of State, he did not issue three certificates, one upon each affidavit, but he issued only one certificate covering all three affidavits. When the Secretary of State issued his warrant of extradition, which was necessary before the accused could be extradited, he issued but one warrant, and when we applied to your Honor for a writ of habeas corpus, we applied in one petition for one writ, and only one writ was issued. And that one writ was heard before your Honor on the record as made up before the Commissioner, Judge Foster acting as commissioner, and this is the judgment that was rendered:

"As to the commitment of the relator (Colonel Collins) to await the action of the President of the United States on the application for the extradition of relator to answer the charge of obtaining property by false pretences from Alia Raza, relator's application for habeas corpus is denied (that was the case in which Colonel Collins was permitted to testify, to a limited extent as we contend). As to the commitment based on the charge of obtaining property by false pretences from Pohoomul Bros. and on the charge of obtaining property by false pretences from Ganeshi Lall & Sons, the writs of habeas corpus are granted, but relator is remanded to the House of Detention to await further proceedings in said last two named affidavits, and it is further ordered that as to the two affidavits last mentioned this cause be and it is hereby remanded to the Honorable Rufus E. Foster, Judge, to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the laws of Louisiana."

From that judgment two appeals were taken, one appeal by Colonel Collins from the whole judgment. This judgment was prepared and handed down, or entered as though there was more than one writ, but always bear in mind that there was but one writ and that Colonel Collins then appealed from the judgment bodily, not only from the judgment directing his extradition or the committing for extradition, but from the judgment remanding him.

The British Consul General also took an appeal, and the Supreme Court heard those two appeals together and rendered one judgment on the two appeals, and, with your Honor's leave and permission, I am going to read—this is a printed copy—it is reported in the 252 United States—I brought this because it is so much easier, and with your permission, I am going to read it, because I think it is very illuminating on the present situation. The opinion was handed down by Justice Brandeis.

(Mr. Spearing then read the opinion in question).

50 This decree, if your Honor please, with all due deference to my friend, was not a remand. Both appeals are dismissed for want of jurisdiction. Therefore we have your Honor's judgment unaffected, because, as I take it, with the appeals dismissed, the judgment stands as rendered.

Now that decision, that decree, became final. We appeared here one day before Judge Foster, still sitting as committing magistrate or commissioner, and instead of undertaking to hear under the judgment remanding—and Judge Foster as committing magistrate has never undertaken to hear under the judgment remanding, and therefore, we have not, up to the present time presented any objections to that, because, as I say, the time for doing so has not yet arrived, we have no occasion to object to his hearing until he undertakes to hear—instead of undertaking to hear on your Honor's judgment remanding, two separate and entirely new affidavits and proceedings were instituted, and under them—mind you, Collins was then, and had been for some little time, out on bond—under the conditions created by your Honor's judgment, Collins was then re-arrested on the new affidavits, entirely new, separate and distinct, even though the verbiage were identical with the former affidavits, and entirely new proceedings, new proceedings—as I say, Collins was again arrested and brought before the Court to be tried on those new affidavits.

We protested and objected—the record is here to demonstrate it—against going into that, on the ground that the case was in the District Court and that no proceedings could be had until—except under the judgment of the District Court—until further orders of the District Court.

We contended that Judge Foster had no jurisdiction to hear those affidavits, and Judge Foster overruled all of our objections. There were numerous objections, the record is just filled with them, and he overruled all of those objections and nevertheless heard the case on those two new affidavits, never once pretending, neither the ap-

plicant in the case nor Judge Foster ever once pretending that he was hearing on the old affidavits, but distinctly and definitely and affirmatively on the new ones, and Collins was committed to await the action of the executive on the extradition.

In that situation he was again admitted to new bail on the new affidavits.

The Court: There are only two affidavits, as I understand it, here?

Mr. Spearing: Only two.

The Court: What became of the one under which he was held?

Mr. Spearing: Nothing has ever been done with reference to that, because, the writ of habeas corpus being one writ, this being one judgment and not divided, our contention is that they cannot divide this judgment, cannot take that portion which is in their favor and avail themselves of it and disregard that portion of it which is against them and in our favor, and the question of the maintenance of the writ of habeas corpus is in our favor, as to the two affidavits, and our contention on that point is that the applicant, the British Government, cannot divide that judgment and say we will disregard
51 that portion which remands Collins and commits him to the House of Detention—we have here a contradictory judgment, we have one which orders him extradited—that is, a judgment which in one part orders him enlarged and in the other part orders him held here.

Now that situation Judge Foster, still as committing magistrate, issued his certificate to the executive, and that went forward to the Secretary of State, and Collins' attorneys in Baltimore, Mr. Kemp Bartlette and Mr. Guy M. Miller, of the firm of Bartlette, Paul & Fagge, appeared before the Secretary of State and made an argument and filed a brief, protesting against the issuance of the warrant of extradition on those two affidavits, or on the certificate of Judge Foster on those two affidavits, and the Secretary of State maintained our contention in that regard.

Our contention was that those are new matters, that Collins was still under the authority of the District Court, he was still in the custody of the District Court under the habeas corpus proceedings, and that the commissioner could not take him, could not take Collins, from the custody of the District Court and try him,—and Judge Foster, as committing magistrate, was trying him again—and order another extradition or discharge him, because a discharge before him would not have availed anything, because he was still in the custody of the District Court—and I have no hesitation in asserting, it was my firm conviction, that, under the jurisdiction, Collins is still in the custody of the District Court, the habeas corpus transferred him from the custody of the Marshal to the custody of the Court, and that no one but the District Court can at this time deal with him.

Now the letter of the Commissioner—that is, the letter from the Secretary of State—is not very long, and I am going to read that letter, if your Honor will permit. It is dated April 29, 1921; it is addressed to Mr. Carter, the Clerk of Court, and it says:

"Address official communications to the Secretary of State, Washington, D. C.

Department of State,

Washington.

In reply refer to So 211. 45 C 69/25.

April 20, 1921.

Mr. H. J. Carter,
Clerk of the United States District Court,
Eastern District of Louisiana,
New Orleans, Louisiana.

SIR: The Department refers to your letter of February 4, 1921, with which, in accordance with instructions from Honorable Rufus E. Foster, United States District Judge for the Eastern District of Louisiana, you transmitted the record of proceedings had before him in the matter of the application for the extradition to India of Charles Glen Collins, together with a certified copy of Judge Foster's opinion.

52 After careful consideration of the matter in the light of the opinion of the Supreme Court in the case of Collins v. Miller, 252 U. S. 364, the Department has been reluctantly forced to the conclusion that at the present time the case is not in such situation as to justify the issuance of a warrant for the surrender of Collins. The Supreme Court in its opinion seems to have held with reference to the habeas corpus proceedings had in this case before Judge Grubb that, since his decision dealt with the detention of the fugitive on three charges and denied relief as to one, but required a further hearing by Judge Foster as to the others, such decision has not the finality and completeness necessary for an appeal to that Court. In the Course of that opinion the Supreme Court said:

"Was the judgment appealed from a final one? A single petition for a writ of habeas corpus thus sets forth detention of the relator on three separate affidavits. As to the commitment on one of these the judgment entered by Judge Grubb directed that the writ be 'denied.' Such denial, or more appropriately dismissal, of the writ would obviously have been a final judgment, if it had stood alone. * * * It declared that 'the writs of habeas corpus are granted' as to the commitments on the other two affidavits and ordered that the case be remanded for further hearing before Judge Foster. * * *"

"Nor need we consider whether Judge Grubb, having found that a proper hearing had been denied by the committing magistrate on the two affidavits, might have heard the case de novo, and have determined thereon whether the prisoner should be discharged; * * * The prisoner remained under the authority of the District Court (see Mr. Justice Nelson in In re Kaine, 14 How. 103, 133-4); and as the writ of habeas corpus had not been disposed

of there so far as concerned the detention on two of the three affidavits, the decision below on that branch of the case was not final. * * *"

"Here a single judgment deals with the detention on three affidavits. Only one branch of the case has been finally disposed of below, therefore none of it is ripe for review by this Court."

The Supreme Court discusses in a general way the appropriateness of the order which was entered by Judge Grubb without passing on the question. With reference to this matter the Court says:

* * * "the extradition commissioner had certified his findings to the Secretary of State before the petition for writ of habeas corpus was filed. Whether, for this reason the time had not passed when the Court could correct the action of its commissioner, except upon reopening of the proceedings before him with the consent of the Executive (see 6 Ops. Atty. Gen. 91),—or, in other words, whether in such a case the power of the court is not limited to ordering the discharge of the prisoner either absolutely or conditionally except upon a rehearing before the commissioner with the
53 consent of the President—this question, we are not required to consider at this time. For the proceeding ordered by Judge Grubb had not been taken; nor had the power sought to be exercised by him been challenged.

In view of the effect of the Supreme Court's decision and particularly in view of the Court's declaration as to Collins being under the authority of the District Court by virtue of the habeas corpus proceedings, it seems to the Department, as indicated above, that it would not be justified at this time in issuing a warrant of surrender.

Accordingly, the record of proceedings had before Judge Foster is returned herewith, and it is requested that you will be kind enough to acquaint him with the views of the Department as set forth, and to convey to him the sincere regret with which the Department has come to the conclusion indicated.

I am, sir, your obedient servant. (Signed) Charles E. Hughes.

Enclosure: Record of proceedings as above.

Now, I submit, if your Honor please, that under those circumstances, neither your Honor nor Judge Foster, neither your Honor as District Judge, nor Judge Foster as committing magistrate, is justified in hearing or otherwise disposing of the new affidavits, that, under the decision of the Supreme Court, you would be going through a vain formality towards something on those new affidavits, and the Secretary of State I have no doubt, would confirm that decision too, so that is not a matter before the Secretary of State. We must have the action of the District Court in the original proceedings, because it is in those proceedings, as the Secretary of State points out, that the Supreme Court held in the appeal taken in those proceedings that Collins is in custody, it is in those original proceedings that the District Court, your Honor as District Judge, has the control and custody of Collins.

Now, if that be true, it seems to me the situation here is this. We have here this judgment, and I submit you cannot proceed further

with this judgment because the judgment remands Collins to be heard before Judge Foster. Whether that is a proper judgment—I mean one that can be legally enforced—it may come up at some future time—but I submit your Honor cannot disregard this judgment rendered by your Honor as District Judge, and your Honor, as District Judge, cannot sit as committing magistrate in this case. Of course the identity of the person who sits on the bench and hears the case is immaterial. The point is the District Judge has custody and control of Collins in the original habeas corpus proceedings and that they must be disposed of.

Mr. Marr: May it please the Court, my view of it is, taking that situation, if Collins is in your custody, and if your Honor is satisfied from the testimony which is now adduced before you, that
54 the habeas corpus ought to be finally denied, then I take it your Honor will deny that writ. You are by no means sitting as an appellate tribunal at all. You are sitting here to decide whether or not, under the record as it is made up, your Honor, a writ of habeas corpus ought to be or ought not to be denied.

Now you have said that, in the condition of the record as it was presented to your Honor originally, you could not pass on that question; that Collins had the right, under the treaty between the United States and Great Britain, to have his preliminary examination conducted in the same way as if he were tried under an affidavit for violation of a statute of the State of Louisiana, and your Honor held that, under the statutes of the State of Louisiana, Collins had a right to appear as a witness in his own behalf.

Now all those requirements laid down by your Honor in the refusal to—in the granting in this qualified way of the writ of habeas corpus, have been complied with. You are not sitting here as appellate judge. All you are asked is to pass upon the record which is now being made up, and say whether or not the record as it has been made up before your Honor is such as to warrant the refusal of the writ of habeas corpus.

Now as far as the first affidavits are concerned, why should we have gone into the trial of the case which has been disposed of by your Honor, you stating distinctly in that case that all the requirements you laid down had been met, that Collins had no cause of complaint so far as imprisonment was concerned, that he had appeared as a witness in his own behalf, that a probable cause had been shown, that he was in India at the time of the alleged commission of the crime, and that he was the person described in the affidavit. So that, in these proceedings, all that your Honor can look into at all is the regularity of the proceedings, whether or not the proceedings which have led up to the judgment ordering the return of the fugitive to the demanding country or whether all those proceedings have been regular. Your Honor held that as to two of the affidavits the proceedings were not regular, because Collins had not been allowed to testify in his own behalf.

Now confessedly it will be shown by inspection of the affidavits themselves that the affidavits made before Judge Foster are, in their terms, exactly the affidavits which your Honor—under which your

Honor—remanded him to be tried; they are exactly the same in verbiage, they charge the same offense, the same party, and on the same persons upon whom the crime was committed, so that everything your Honor's judgment required has been done in this case, and now, with the entire record before you, the sole question presented to you for adjudication is whether or not under these two affidavits on which your Honor remanded him, whether or not this man is entitled to be enlarged on habeas corpus. If he is, why, grant the writ; if he is not, why, refuse the writ.

We have now exactly the same affidavits and exactly the same case that was presented to your Honor in the case in which
55 the writ was refused. We have the identification of Collins as being the man who was wanted in India; we have the testimony of his own admission that he was in India at the time of the commission of this offense; we have his being examined as a witness in his own behalf, as was alleged and was granted to him under the laws of the State of Louisiana. So your Honor has presented to you for adjudication under these two affidavits exactly the same condition as you had in the case of the affidavit in which the writ was refused.

Now the view that the Secretary of State takes of the matter, I think your Honor knows. I think your Honor has in your possession the letter which the Secretary of State wrote to me and which I transmitted to you, and which, I believe corresponds practically with the same letter which he wrote to the Clerk of Court.

Now everything that was required by your Honor has been done in this case, and it seems to me there is nothing left to do except to refuse the granting of the writ, because it is a question of what the affidavits really are and not what you may happen to call them. Now does it make any difference in the world whether Collins is prosecuted under an affidavit dated the 13th of May, say, or is prosecuted under one dated some other date, now what difference does it make; they are exactly the same affidavit.

The Court: Wouldn't there be this difference? If I were to dismiss the habeas corpus, he might then be apprehended under the original warrant from the Secretary of State without any reference to these second proceedings, wouldn't he?

Mr. Marr: I don't exactly understand.

The Court: If I were to dismiss the writ of habeas corpus, wouldn't the original warrant issued by the Secretary of State be sufficient for his apprehension and return to India without resort to any of those proceedings?

Mr. Marr: I suppose so.

The Court: That would be wrong, of course, from my point of view, because I think that warrant was not sufficient having been issued without Collins having been examined as a witness.

Mr. Marr: But he has been examined as a witness since.

The Court: He was not examined at the time the warrant of the Secretary of State was issued, the warrant was issued without an examination of him in two of the proceedings, so if he was apprehended under that warrant, then the case was in no better position

afterwards, when he was heard as a witness, than it was when I first passed upon it, because that warrant was issued without any reference to subsequent proceedings, since the Supreme Court sent the case back, so you would either have to change my ruling that an examination was necessary to make the Secretary of State's warrant legal, or else I would have to stick to my ruling, it seems to me, and make a rehearing of the case by the commissioner and an examination of Mr. Collins by the commissioner a condition precedent to my denying the writ.

Mr. Marr: Yes, but that examination has been held.

The Court: Yes, but it was held after the warrant was is-
56 sued. If I deny the writ of habeas corpus, the effect would be to remove him to India, because you have no warrant from the Secretary of State, the Secretary of State——

Mr. Marr: The Secretary of State has not issued any warrant, he has refused to issue——

The Court: That is what I said.

Mr. Marr: He has refused to issue that warrant on the basis of the judgment rendered by the Supreme Court of the United States, that judgment being that the matter was not finally disposed of.

The Court: By final judgment, but it seems to me the petition of habeas corpus—dismissing the writ of habeas corpus, the result would be that Colonel Collins would be apprehended under the outstanding warrant from the Secretary of State, in fact, though there has been no hearing which has been presented to the Secretary of State in which he was allowed to be examined on two of the affidavits.

Mr. Marr: If that was done, why the result would certainly be the beginning of all of these proceedings over again.

The Court: I think you will either have to rely on his presence now without having had him re-examined in the original proceedings, you would either have to rely on the one affidavit and ask me—have me dismiss the writ as to that affidavit and grant the writ as to the others, if that can be done, and then apply to the Secretary of State for a new warrant under the second proceedings in the two affidavits. Then the Secretary of State would not have the answer that he was under the jurisdiction of the District Court, because he would not be.

Mr. Marr: I just don't exactly catch that.

The Court: It seems quite clear to me. If I dismiss the writ as you ask me to in its entirety, he would fall under the original warrant issued by the Secretary of State and he could be apprehended and sent to India under that warrant, in spite of the fact that he has never been examined on the two affidavits——

Mr. Marr: But he has been examined, in point of fact.

The Court: But that has never been presented to the Secretary of State in the proceedings on which the warrant was issued. If the hearing had been in the original proceedings and Colonel Collins had been examined and request made to the Secretary of State to reissue the warrant, then your position would be correct, but that was not done. As I understand Mr. Spearing, on two of the affidavits, Mr.

Collins was not permitted to testify, in the original proceedings, and the matter is in exactly the same condition as it was two or three years ago when it was presented to me—as to one of the affidavits he was heard on and as to two of them he was not heard on, in those proceedings.

Now if I dismiss the writ of habeas corpus, that makes the Secretary of State's warrant which was outstanding when I heard the case before effective, and he would be removed to India under that warrant of the Secretary of State, though he has not testified at all in the proceedings under which that warrant was issued.

Now it seems to me, that being true, and he having applied in the new proceedings under the two affidavits and permitted to be
57 examined, under that proceeding, and you having applied to the judge for a certificate for the Secretary of State for a warrant, and he refusing the warrant under the second proceeding on the ground Colonel Collins is still in the jurisdiction or custody of the District Court, the way to get at it would be to discharge him from the custody of the District Court, so that they the Department of State would have no answer to your request for a warrant under that new proceeding. To do that, it seems to me is the only way I can do that; as it stands now, to hold him under *under* one affidavit and discharge him under the two affidavits——

Mr. Marr: You have, under these affidavits, what your Honor requires to be done.

The Court: I know, but that goes back to the fact that if you dismiss the writ you reinstate that warrant of the Secretary of State. But then he has never been examined in the proceedings in which the warrant was issued. That is clear, because the Secretary of State has refused to issue a warrant in the new proceeding. He never testified under the old. Then he would be removed to India under that warrant under three affidavits, when, up to the present time, he has never been permitted to testify under two of them. I am perfectly willing, if it suits your purpose, to amend the order in the original proceeding so as to dismiss the writ as to one affidavit and grant the writ as to the other two affidavits, reciting the fact that it is——

Mr. Marr: If your Honor please, if your Honor does that, that would be a final disposition——

The Court: That is true, but you are proceeding under a new case, and your demand on the Secretary of State for a warrant is in the new case. The only way to do is to get the old case out of the way, or have another hearing on that old case instead of the new one. It seems clear it must be one of two things, either have the order in the old proceedings, by which the case was remanded, or else abandon it and then proceed to rely on the new proceedings. If you elect to do that, then I will dismiss the writ as to the good affidavit in the original proceedings and grant the writ as to the two affidavits that were held to be bad because he was not permitted to testify under the old proceedings, and let you apply to the Secretary of State for a new warrant under the new proceedings.

Mr. Marr: Your Honor's opinion then is that, although these new affidavits recite exactly the same condition of facts as those recited in

the affidavits remanded by your Honor, that those are virtually new proceedings?

The Court: Well, I don't know if they are or not. Then you should re-apply to the Secretary of State under the old proceedings for a new warrant, because he has never had an opportunity to pass on the matter since it has been in any different state than it was originally.

Mr. Marr: The Secretary of State, as I understand his communications, both to me and to the Clerk of Court, his view was that there had never been a final disposition of this case, under the decision of the Supreme Court of the United States.

58 The Court: Excuse me. I said this: I don't suppose it requires any new warrant from the Secretary of State. It seems to me what should have been done was to have permitted Colonel Collins to testify in the original proceedings, as required, and report that fact to the District Judge who granted—that is myself—who granted the habeas corpus. That having been done, then I would have dismissed the petition in its entirety and he could have been apprehended under the original warrant.

Mr. Marr: That is just exactly what has happened.

The Court: Mr. Spearing expressly stated there was no hearing in the original proceedings.

Mr. Marr: That was done on new affidavits which took the place of the old affidavits. Maybe they were given a new number but it was exactly the same proceedings; the recitals of the affidavits are exactly the same.

The Court: Well, you can have two companion prosecutions under identical affidavits; no doubt about that.

Mr. Marr: Identical affidavits, charging identically the same thing. The substance of things don't change because they are brought in different proceedings.

The Court: Well, he went further than that, and said you declined in that hearing to offer evidence in support of the original affidavits.

Mr. Marr: We went into the whole case just exactly the same as we did in the original, with the single exception that Collins' witnesses were heard.

The Court: Of course you concede that one commissioner may have a hearing on an affidavit against a man, and another commissioner might have the same hearing on the same identical facts and the same identical offence, and they would not be the same case.

Mr. Marr: It is not a different case. The only difference between the two cases is that the new affidavit was substituted for the old one.

The Court: If that is true——

Mr. Marr: That is absolutely the only difference——

The Court: Then it becomes a question of fact.

Mr. Marr: They may have gotten a different number on the docket of the court, or may have been docketed at that time, but that does not make it a different proceeding.

The Court: I don't agree with you on that. The cases are identified by different numbers on the docket. An order might be made

in one case and that order would have no application to the other case, unless they are consolidated. If you have them numbered 495 and 500, then, though the subject matter might be identical, they are different cases altogether, and an order made in No. 500 cannot be made to apply to No. 495.

Mr. Marr: Well, I never imagined there was so much sanctity in a mere number.

The Court: The number is the one thing that you distinguish one case from another with.

Mr. Marr: Yes, but that is for the convenience of the clerk, but it doesn't alter the substance of things.

59 The Court: You certainly wouldn't say—for instance, suppose two lawyers brought the same suit, as they sometimes do, for the same client and the same cause of action, and the only difference is that they are differently numbered, and then, if one case is dismissed—for instance, if there is a dispute about who is the lawyer for the plaintiff—if one case is dismis-ed, that wouldn't have the effect of dismissing the other case surely?

Mr. Marr: Just exactly the same way, suppose a man is indicted for manslaughter, and the District Attorney enters a noll- pros. on one count in the indictment and the Grand Jury convicts him on the indictment, it is the same prosecution.

The Court: It is the same prosecution but not the same case. If it was the same case, there would be no indictment, because that indictment had been annulled.

Mr. Marr: I can see, if your Honor please, that if there had been a change in the affidavit, if anything other or different was done in the trial of the case, in allowing Collins to place on the stand the witnesses that he was not allowed to examine, that it would be a different proceeding, but when no such thing takes place and the affidavits are identical, and the only distinguishing mark between those affidavits is the numbers they bear on the docket of the Court, I can't see for the life of me how it is a different proceeding. It is just carrying out what your Honor said should be done, that this man should be given an opportunity to be heard in his own behalf.

The Court: Sure, but that was in the case then pending, and there is no identi-y of subject matter, because in the original case there were three affidavits, and he did not testify on two affidavits, was it?

Mr. Marr: Two affidavits.

The Court: Well then, the subject matter is not the same.

Mr. Marr: There were three affidavits, and those affidavits were tried separately, those affidavits were tried separately, and there was——

The Court: You overlook the fact they were consolidated and one judgment issued covering all three.

Mr. Marr: It is very true they were consolidated at the time, but different judgment- were rendered in each case and at different times.

The Court: Well, the certificate on which the warrant was based was after the consolidation and at the time this hearing was had, the

second hearing, there was a consolidated case involving three affidavits. Now the new case with a different number involved but two of the three affidavits, so it can not be said that the subject matter is identical.

Mr. Marr: Your Honor must bear this fact in mind that it would have been a vain thing to have tried all three cases over again, when your Honor refused the writ of habeas corpus in one of the cases.

The Court: I am not contending I never heard the first case, but I mean you should have dealt with the two affidavits in the old case. If you insist in the new case, then you can't do it in
60 the old. It strikes me I have no right to change the order I have already made and accept any other proceedings taken in that case since I rendered it. All I can see I can do for you now is this; modify the order in the first case so as to deny the writ as to the one affidavit and so as to grant the writ as to the other two affidavits, reciting that there has been no examination, and that an examination has been held in separate proceedings, and therefore there is not any longer any use in that first proceeding, so far as the first two affidavits are concerned. Then, without discharging relator—I mean Colonel Collins—from the custody of the District Court in the first proceeding, and he would be remanded back under the first affidavit to the extradition—the commissioner that delivered the extradition order—then you could re-apply to the Secretary of State under the other two affidavits in the second proceedings and certify to him that Colonel Collins was no longer in the jurisdiction of the District Court, and the original habeas corpus proceedings had been finally disposed of. Under that, the Secretary of State would issue a warrant for his extradition under the other two affidavits. Now if you don't do that all I can say is to have the hearing still under the first proceedings.

Mr. Marr: Then you are brought finally to this proposition. It is intimated in the opinion of the Supreme Court of the United States that they doubted very much whether or not the District Judge could remand the case to the commissioner to take testimony, basing that dictum on the theory that your Honor did not sit as an appellate court, and that, as you did not sit as an appellate court, you had no right to remand any case to the commissioner for trial at all. So if that view of the situation is taken, you see the danger that that presents.

The Court: Well, you can obviate that by proceeding on the other idea, for you to be able to say to them there is nothing held in the District Court under the original proceedings. When you get rid of that obstacle, then the Secretary of State would manifestly have no reason for not issuing the warrant under the second proceedings. The second proceeding is as good as the first, except you have not got that one good affidavit in the second proceeding.

Mr. Marr: The Secretary of State would be in this position. He would issue his warrant on the first affidavit because your Honor will have granted the writ of habeas corpus as to these two subsequent affidavits.

The Court: It has already been issued under the first proceeding.

Mr. Marr: No; he wouldn't do anything about it at all. Your Honor has his letter there.

The Court: No; I say, under the first proceedings there is a warrant of extradition issued by the Secretary of State.

Mr. Marr: Yes sir; that originally took place.

The Court: How did that describe—did it describe it as three affidavits or how?

Mr. Marr: How is that?

The Court: Did it describe it as two or three affidavits, that he was allowed to testify on one, or describe it as three affidavits
61 or how? I say, did the original warrant of the Secretary of State show that he relied for its issuance on the three affidavits that had been filed by you against Mr. Collins?

Mr. Marr: I never saw that warrant, so I don't know what the recitals are. I know what took place was this, that after these two affidavits were tried and were certified to the Secretary of State, he refused to surrender Collins, as I take it from his letter, on that ground, that the Supreme Court of the United States had held that the judgment rendered in the Collins case was not a final judgment. Now in the course of that judgment——

The Court: I don't see how that can reasonable be. I thought his reason was, as read to me, he wouldn't issue his warrant for his extradition, as long as his custody remained in the District Court.

Mr. Marr: I didn't read it that way at all. The idea as conveyed to my mind was that the——

The Court: Let's see the opinion; that is the best way to tell.

Mr. Marr: —matter had not yet been disposed of.

(Document in question handed the Court.)

The Court: This is what I had in mind. "In view of the effect of the Supreme Court's decision. * * * he would not be justified at this time in issuing a warrant." (The court reading from document.) In other words, they would not interfere with the jurisdiction of the District Court, which then had the custody of Mr. Collins under habeas corpus.

Mr. Marr: That seems, of course, to arise from his interpretation of the language of the Supreme Court, namely that this case had not been finally disposed of, and, as it had not been finally disposed of, the accused was in the custody from which he sought to be released.

The Court: What you have got to get rid of, as I see it, is the jurisdiction of the District Court and the custody of Mr. Collins by the District Court. When you have done that, you can have him apprehended on the two affidavits.

Mr. Marr: The only possible way that can be done would be for your Honor to maintain the writ of habeas corpus as far as the original affidavit is concerned—I mean to refuse the writ of habeas corpus on that.

The Court: Well, I don't think so. I think it could be done by granting the writ of habeas corpus.

Mr. Marr: By what?

The Court: By granting the writ of habeas corpus.

Mr. Marr: You are not going to grant the writ, are you?

The Court: If I granted the writ of habeas corpus, he would then pass out of the custody of the District Court.

Mr. Marr: You can grant the writ of habeas corpus as to that affidavit in which it was held that the proceedings were perfectly legal.

The Court: Well, I could, at your request, certainly. I told you if you wanted it done, I will deny—dismiss the writ as to the good affidavit, and grant the writ as to the other two affidavits. 62 Then it seems to me, the effect of that would be he would be discharged from custody on the bad affidavits and be surrendered to the extradition officer under the good affidavit, and that would eliminate the custody of the District Court altogether. He would therefore be no longer in the custody of the District Court and could be dealt with by the Secretary of State.

Mr. Marr: He would then not be in the custody of the District Court, but he would be in the custody of the United States Marshal.

The Court: No.

Mr. Marr: He must be in the custody of somebody if the writ of habeas corpus was denied.

The Court: He would be in the custody of the United States Marshal for surrender to the extradition officer.

Mr. Marr: What becomes of these two affidavits?

The Court: Then you would apply to the Secretary of State to issue the warrant, have it certified that he was no longer in the jurisdiction, or under the authority of the District Court, and that the original habeas corpus proceedings had been finally disposed of by that order.

Mr. Marr: Then what becomes of the other two affidavits?

The Court: What do you mean; the second or the first?

Mr. Marr: The second affidavit.

The Court: Well, I say, you have got the new proceedings—under that new proceeding, Judge Foster has issued a certificate that you are entitled to extradition, to a warrant of extradition. The State Department refused to make it because of the custody, supposed custody, of Mr. Collins in the District Court, and that is the only reason they refused to grant it. Therefore, as soon as Mr. Collins is discharged from the custody of the District Court, then you represent that fact to the State Department, and, as I understand it, they will no longer refuse to issue the warrant of extradition.

Mr. Marr: Then if your Honor takes that view of this case, these two affidavits are new proceedings, and Judge Foster has certified to the Secretary of State that on these new proceedings he has found this man is a fugitive from justice and ought to be surrendered to the justice of India, and if your Honor maintains the writ of habeas corpus so far as dismissing the writ of habeas corpus, so far as it is based on the first affidavit, then, it seems to me that Collins would be extradited to India upon all three charges.

The Court: That is what it seems to me.

Mr. Marr: That is what I want to know.

The Court: Of course the only doubt about it would be whether the warrant issued by the Secretary of State, having been issued upon the representation that all three affidavits or charges against him could be executed. I would suggest that you change it so that there would be only one charge against him.

Mr. Marr: So far as that is concerned, the judgment is now final, absolutely final; that case is entirely disposed of.

The Court: By appeal?

Mr. Marr: I mean it is disposed of, it is a final judgment.

The Court: Sure.

63 Mr. Marr: Then we are in this position. We have the final judgment of your Honor, maintaining the warrant as to one affidavit, holding that there is enough there to keep him on warrant, and dismissing the other two. That is a final disposition of the case, from which an appeal may now be taken. Then as to the two other affidavits, if the Secretary of State issues his warrant on those affidavits and Collins is taken back to India, he can be tried on all three affidavits.

The Court: If the appeal is decided in that way.

Mr. Marr: So, if they want to get any relief out of these two new proceedings, they will have to keep Collins in jail, apply for a writ of habeas corpus and have your Honor try it.

The Court: That is true, after you get your warrant from the Secretary of State; till that, of course, he cannot be held in custody in the second proceedings.

Mr. Marr: Can't what?

The Court: Can't be held in custody in the second proceedings until the Secretary of State issues a warrant for his extradition; therefore, even by consent, I cannot hear a habeas corpus under the second proceedings.

Mr. Marr: The very moment—I understand there are two stages in those extradition proceedings. One is when the affidavit is made. Upon that the accused is entitled to be bailed up to the time that there is an actual——

The Court: Till the judge finds he is a——

Mr. Marr: The very moment that a decision is rendered that this man is a fugitive from justice, that very moment his right to bail ceases; he is not entitled to bail after that. He is entitled to bail from the time that the affidavit is made up to the time that a court of competent jurisdiction finds he is a fugitive from justice, the moment the very moment he is declared to be a fugitive from justice, that is the end of it, so far as the right to bail is concerned.

The Court: Well, he is out on bail since then as a matter of fact.

Mr. Marr: Yes, because——

The Court: All I meant was this (both talking)——

Mr. Marr: I told the British Government very firmly that I, individually, wouldn't be responsible for Mr. Collins being enlarged on bail; that was a responsibility I wouldn't assume, but if the

British Government was willing for him to be out on bail, that was their affair; I had no objection, but for myself I wouldn't assume that responsibility.

The Court: Here is what I meant: To save a trip down here, I thought maybe he could surrender himself, and we could hear the habeas corpus on the second affidavit say tomorrow, but I judge from the history of the case he can't be in custody until the Secretary of State issues the warrant.

Mr. Marr: Can't do what?

The Court: You can't be in custody, at least you can't apply for a habeas corpus until the Secretary of State has——

Mr. Marr: Oh yes; if your Honor permits it, if he wants to try that out, I am perfectly willing.

64 The Court: It would suit my convenience very much if you would apply for a writ of habeas corpus under the second proceedings.

Mr. Spearing: May it please the Court, with all due deference to your Honor, and what has been going on between your Honor and Judge Marr, I don't want to do anything that might be construed into an admission that your Honor has the right to follow the course which your Honor has indicated you would be willing to follow. We have here a judgment——

The Court: Well, if you want to get relief from the second, you are bound to apply for a habeas —.

Mr. Spearing: No; I wasn't talking about a habeas corpus. I was talking about disregarding a judgment which your Honor has rendered some two years ago. We have a judgment rendered on February the 21st, 1919, and as I understand it now, the suggestion is that this judgment will be entirely disregarded.

The Court: It is not a final judgment, and therefore it is in the court, and I can make any judgment I see fit. In fact, in view of the fact that the Supreme Court has expressed doubt as to the right of the commissioner to hear any further testimony, it will certainly be my duty to make a final disposition of the case in response to the suggestion of the Supreme Court in that regard.

Mr. Spearing: Well, of course your Honor may disregard the judgment, but with all due deference, it does not seem to me your Honor has the right to disregard this judgment.

The Court: If it was a final judgment, of course I wouldn't, but that is what the Supreme Court says it is not, it is not a final judgment.

Mr. Spearing: They say it is not a final judgment?

The Court: Let me ask you this. Suppose they had said straight out it was an unauthorized order to direct the commissioner to hear further testimony, wouldn't you think that under that decision so handed down I could modify the judgment?

Mr. Spearing: If they said that this was an unauthorized judgment, then it wouldn't have been any judgment at all, they set it aside, but they didn't say it was an unauthorized judgment, they made the suggestion it was not——

The Court: I don't doubt my right to modify or alter an order that is not a final order, at any time.

Mr. Spearing: Here is the reason for making those two fresh affidavits, that the applicant didn't want to act upon this judgment. I recall distinctly that when your Honor indicated, when you had the habeas corpus proceedings before you, when you indicated what your conclusion was, or you expressed your willingness to do one of two things, either render one separate judgment, discharging the writ as to one case, and another judgment maintaining the right as to the other case, or you would put that conclusion into one judgment, and, on consideration, counsel, my friend on the other side, took advantage of the suggestion to put it in one. Now he finds he is in this position. He doesn't want to come under this judgment, because, with all frankness, counsel knows, and I know, that if we come under this judgment, whether the right to do so will be
65 granted or not, I shall apply to Judge Foster for the privilege of taking testimony in all of the cases. Now I submit, in all candor, that I——

The Court: Well, you could do that just as readily under the new ones.

Mr. Spearing: No, we could not, because under the new ones there wouldn't be any remand, if your Honor carries out the proceedings and your Honor carries out the plan suggested in the discussion, it can not be done, and that is just the very thing counsel is attempting to avoid.

The Court: Why should I not pursue this plan in pursuance of my previous holdings?

Mr. Spearing: Even if your Honor carries out the plan, if all three affidavits—and that is a thing I don't think you have a right to do—either all consolidated and set up substantially the same facts, the only difference being the names of the parties, the amount involve- and the character of the jewelry, substantially all the other facts are the same, certainly the substantial facts are the same—it does not seem to me that we ought to be put to the extremity of having two cases where there may be an appeal either by the British Government or by Collins, because manifestly, if the judgment is rendered against Collins, we shall appeal, and I assume judging by the entire course pursued by the British Government before, the writ is finally granted, the British Government will appeal. Now it does seem to me we ought not, for the convenience of either litigant, we ought no——

The Court: What is the use of doing all that——

Mr. Spearing: What's that, your Honor?

The Court: I should say, as a matter of procedure, it would have been simpler to dismiss the first proceeding and make all three affidavits on a new proceeding.

Mr. Spearing: But that has not been done.

The Court: Now the matter has proceeded so far, it would be easier to have the new proceedings completed, so what is the use of arguing about the other?

Mr. Spearing: With all due deference, I don't think your Honor ought to follow the course which you have indicated you are willing to follow. That is why I was addressing myself on that point, because we have *nor* heard practically one case, and now it seems to me in order that the British Government——

The Court: Well, of course the British Government presented them in three separate cases, and if they see fit by order of consolidation to have them become one, they can do so, but in so far as that is concerned, there is no obligation on the part of the British Government to join them.

Mr. Spearing: No; but we are dealing now with the situation as it is.

The Court: We are dealing with a situation in which there is already one case in which the Secretary of State has issued a warrant, and the second case in which other two warrants are joined and not three.

66 Mr. Spearing: No; the Secretary of State issued one warrant, and I am led to believe—frankly I don't know but I am led to believe—this warrant of extradition must refer to the three cases, because the certificate of Judge Foster as affecting those three cases, distinctly refers to each one of them, and I assume that the certificate from the Secretary of State refers to those three cases. Now if that be true, manifestly the Marshal cannot act upon a warrant referring to three cases when only one still holds good, I submit, there being one case before your Honor, and that is all, there being one warrant from the Secretary of State, whether the three cases were named in that warrant or not, that there should still be one case before your Honor, and before the Court, and that it should not be split up.

The Court: I understood you to insist it was split up, that this second proceeding was a different proceeding?

Mr. Spearing: That is absolutely true.

The Court: If you take a contrary view, it is a simple proposition, of course.

Mr. Spearing: Oh no. That is one of my complaints against Judge Foster, that he was splitting up the case and that he had no right to hear on those two affidavits. I am talking about splitting up this one case, and I have always contended that they ought not to split up a case, and I urge, if the Court please, that your Honor ought not to split the case, because your Honor got the case on one petition for a Habeas Corpus, and rendered one judgment, and there was one certificate of extradition, one warrant of extradition, and that was the matter that was before your Honor, and I submit that on that your Honor can not so divide that one case, divide that one petition, divide that one warrant of extradition.

The Court: Well, I certainly can make an order that holds him on one warrant and not on the other. You may have to apply for a new warrant after that, but it is certainly competent for the District Court to order his discharge on part of it and have him held on the other part of it.

Mr. Spearing: Of course I don't know what course——

The Court: Why wouldn't it be just as easy for Judge Marr to dismiss the whole lot—discharge him as to the whole first proceedings and institute another proceeding on the good affidavits, then you wouldn't be confronted with the proposition as to whether I should let him go on part and hold him on part.

Mr. Marr: That, it seems to me, your Honor, has no basis upon which to rest. Suppose there came up to you three cases. Suppose your Honor had examined the testimony for the purpose of finding whether any testimony had been adduced in this case, that you should find that in part of the case there was no evidence of criminality whatever, not a particle of evidence of criminality, but that in one of the cases submitted to your Honor there was evidence of criminality, what would be the proper judgment to render in a case of that sort? Wouldn't it be to maintain the writ of habeas corpus so far as this case was concerned in which no evidence of criminality was found and to refuse the writ of habeas corpus in so far as that affidavit was concerned where criminality was disclosed——

The Court: One minute; I want to——

67 Mr. Marr: That is the way it looks to me.

The Court: I told you that is my view of my order, but that may invalidate the warrant issued before it was made. The warrant was issued on the basis of the then pending charges or affidavits. Well now, habeas corpus is granted as to two of them, and it may be that same warrant would not be valid, because on that warrant they could try him on all three charges, and the order of the court was to keep him from being tried except on the one that was maintained.

Mr. Marr: It may be necessary to get a new warrant, but that new warrant would be based, not upon the finding of the commissioner, but upon your Honor's finding on the petition of habeas corpus. Now so far as——

The Court: Wait a minute. Suppose it goes no further than up there. Is it not going to be more trouble for you to get that warrant from a habeas corpus warrant than it would be to file another affidavit and start out entirely anew? Is not the State Department going to raise the same or similar——

Mr. Marr: The trouble about the whole business is this. The Collins case has been in this country so long it has almost acquired the right to American citizenship, almost the right to be naturalized, and it is getting old and I would really like to get rid of the case. Now it seems to me this proposition of law is absolutely sound, there is no controverting, that if three affidavits, or a dozen affidavits were made against the accused, and the commissioner commits him on all the dozen of those affidavits, a writ of habeas corpus is applied for, and your Honor, sitting as judge on that habeas corpus, examining the testimony that is adduced, finds that in certain cases there is not one particle of evidence——

The Court: I know, I agree with you on that.

Mr. Marr: Well, that is the way it looks to me.

The Court: That don't meet the difficulty,—so that they will let the old warrant stand or give you a new warrant on the habeas corpus?

Mr. Marr: I should say it strikes me——

The Court: Wait a minute. Let me suggest this: Is not the basis of the State Department's action——

Mr. Marr: There is one thing——

The Court: Wait. —the finding of the extradition commissioner. Well, you run counter to that proposition in presenting the record of the District Court and not of the commissioner as the basis for the issuance of the warrant. We can't issue a warrant except on the findings on the extradition commissioner.

Mr. Marr: I don't think that at all.

The Court: Well, you take the risk of that; I do not.

Mr. Marr: Well, I will tell you the way——

The Court: I am perfectly willing to make the order just like I think originally——

Mr. Marr: I think this is the way, if your Honor will allow me. I have been fooling with this Collins case so long, it has been going over from month to month and from year to year, and I am
68 very anxious to get a final judgment. If we go to Washington and we lose the case there, why I would rather begin all over again than take two or three bites at it before in Louisiana. In the first place I will have to make my affidavit, and then an application would be made to your Honor for a habeas corpus——

The Court: Well, that will be under these other——

Mr. Marr: How is that, your Honor?

The Court: It will be under the other two affidavits, so you are no worse off in that respect. As a practical matter, I think you are taking an unnecessary chance. You might as well dismiss the whole original ones and start all over again. However, as I say, I will make the order so as to dismiss the writ as to the good affidavit and grant the writ as to the other two.

Mr. Marr: I take it. Another thing, your Honor. As a matter of fact when the Secretary of State comes to decide whether or not he will issue his warrant for extradition, I take it that he will act upon that case just as he has in this. He will look at the decision of the Supreme Court of the United States on the question. I should think that is what he would do, and I would rather just take my chance.

The Court: All right.

Mr. Spearing: If your Honor please, I want to reserve my rights, if your Honor concludes to enter such an order, and protest against it, and protest against your Honor doing it, and I do it on the ground that we have here a judgment, and it is not competent for the Court to disregard this judgment and split it up, the judgment we are under here to-day, under any petition or any proceeding to consider this judgment or its effect in any manner, shape or form, and that the question of the disposition of the judgment of February 21, 1919, entirely new matter is injected into the case after the matter which was up for consideration to-day was presented to the Court, and that it is—we are not ready to argue that point of the case, we didn't come prepared to meet that issue at all, we had no idea when the case was fixed for to-day that the question of modifying, changing or disregarding the judgment of February 21, 1919,

would be brought up or injected into the case, and therefore we protest and object to the court, protest against and object to the court modifying, changing or disregarding that judgment in any manner shape or form.

The Court: Well, the only other question is; you are going to apply for a habeas corpus under the second set of affidavits. What is your objection to having that heard say to-morrow?

Mr. Spearing: If your Honor please, under the view we have already expressed, and the view we have of this case, and the action of the Secretary of State, this second set of affidavits in these two cases have absolutely no legal binding force or effect, and we don't care to do anything that might be construed as admitting that they have any legal force or effect.

The Court: If you apply for his discharge under the idea they are not valid, that would not be waiving your rights, in
69 fact, that is the only way you can raise it, by writ of habeas corpus, if you don't file a writ, you have to acquiesce in it.

Mr. Spearing: Yes, but the situation now is, there is no warrant by the Secretary of State. On the contrary, the Secretary of State has refused to issue a warrant.

The Court: It would only be done by him surrendering himself to the Marshal. As long as he is out on bail you can't apply for a habeas corpus. You can, however, easily obviate that by permitting him to surrender himself and then applying for a writ.

Mr. Spearing: That is not the point I was addressing myself to. I don't make the point that he is not in custody. I say that the Secretary of State has refused to issue the warrant, and therefore until the Secretary of the State issues his warrant on those two cases, Collins has nothing to fear.

The Court: Well, I guess you are right on that.

Mr. Spearing: And therefore there is no necessity for applying for a writ. The necessity for a writ has not yet arisen, and unless the Secretary of State changes his mind and his plan, the necessity for a writ under this second set of affidavits will never arise.

The Court: Well, I guess that is sensible too. I was only anxious to avoid another trip here, but I see it can't be accomplished.

Mr. Spearing: I want to say, your Honor, I have no disposition to cause you the least inconvenience, but I know your Honor will appreciate that in a matter of this kind——

The Court: Well, if you prepare the order to be presented to me to-morrow morning, I will stay here and give it in proper shape. It seems to me the order ought to be this: that that order, originally or modified to the extent that the writ is, as to the good affidavit, is left as it stood in that order, and as to the two other affidavits, in view of the fact there has been no examination in that case, and that the prosecutor has filed other affidavits covering the same subject matter, under which the judge has certified, they no longer rely on those and therefore I discharge the prisoner as to those two affidavits, and you have got an order that turns the custody of the prisoner over from the District Court to the extradition officers, and discharging altogether in the other cases, so that in no sense is he

in the custody of the District Court or is the case before the jurisdiction of the District Court.

Mr. Spearing: And on which you have rendered final judgment, finally disposing of the case?

The Court: The subject matter of the case is the custody of the prisoner; if he is directed to be turned over to the extradition officers on one charge and discharged on the other two. That disposes finally of the subject matter of the case, the custody of the prisoner.

Mr. Spearing: So far as the other warrants are concerned, I take it your Honor's decision has nothing to do with them.

The Court: It wouldn't refer to them at all, except as reciting you are relying on them, and as a reason for dismissing—for discharging the prisoner on the other two affidavits in the original case. I think it ought to recite the proceedings you have taken under the new affidavits as a ground for proceeding no further in the original case on those two affidavits and discharging the prisoner from custody on those two affidavits.

Mr. Marr: I am anxious to have the matter in such shape that we will not be met again at Washington with a statement that the proceedings didn't come from any lower court at all—something the court raked up and found out, and I don't want to be put in such a position again.

The Court: I think you are right. What you first want to do is to satisfy the State Department they have the right to issue a warrant under the second affidavits.

Mr. Marr: Yes.

The Court: To do that you have to show this court has no longer jurisdiction of the case and no longer has the custody of Colonel Collins, and if you have an order drawn up that way and it answers your purpose, I will be glad to sign it.

The Court: Judge Marr, if you will draw up the order and be down here to-morrow at 10.00 o'clock tomorrow, I will be here, and Mr. Spearing can be here and present any objections he may have to its form.

Judgment.

[Filed Oct. 25, 1921.]

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

Whereas under date of February 21st, 1919, a judgment was rendered herein denying relator's application for habeas corpus insofar as the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza is concerned, but as to the commitment based on the charge of obtaining property by false pretenses from Pohoomull Brothers and from Ganeshi Lall & Sons the writs were granted and relator remanded to await further proceedings in said last two named affidavits, and as to the said two affidavits this cause was remanded to the end that relator be given the opportunity of introducing such evidence as he might offer

at a preliminary examination under the law of Louisiana, and whereas it has been brought to the attention of the Court that under said order remanding, no examination has been held, but on the contrary that the prosecution under said affidavits has been definitely abandoned by the British Consul General, and other affidavits have been filed by said British Consul General.

It is now adjudged and decreed that as to the commitment of relator to await the action of the President of the United States on the application of relator to answer the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza, relator's application for habeas corpus be denied, and relator is remanded to the custody of Victor Loisel, U. S. Marshal for the Eastern District of Louisiana and it is further ordered, adjudged and decreed
71 that as to the commitment based on the charge of obtaining property by false pretenses from Pohoomull Brothers and on the charge of obtaining property by false pretenses from Ganeshi Lall & Sons, the writs of habeas corpus are granted; and as to the two latter commitments and the charges on which they are based, the petitioner is discharged.

Given this 25th day of October, 1921, (Signed) W. I. Grubb, District Judge.

Petition and Order for Appeal.

[Filed Nov. 28, 1921.]

United States District Court in and for the Eastern District of Louisiana.

No. 15959.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

Petition & Order for Appeal.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

The petition of Charles Glen Collins, applicant in the above entitled and numbered proceedings for writs of habeas corpus and certiorari, respectfully represents:

That there is error to his prejudice in the judgment rendered and signed in these proceedings on the 25th day of October, 1921 and that petitioner is aggrieved thereby and desires to take an appeal to the Honorable the Supreme Court of the United States with supersedeas that petitioner has prepared and files herewith his assignment of error and is ready and prepared to furnish a bond with good and solvent surety in such amount as the Court may order conditioned as the law directs, for the payment of damages and costs of appeal and for any other penalty that may be inflicted or named.

Wherefore, petitioner prays that he be granted an appeal from he judgment rendered and signed in these proceedings on the 25th lay of October, 1921 returnable to the Honorable the Supreme Court f the United States within the time and in the manner pointed ut by law upon petitioner furnishing a bond for such amount as nay be ordered by this court conditioned as the law directs and for he payment of damages and costs of appeal or any other penalty hat may be inflicted or named; and that citation of appeal issue. Signed) Charles Glen Collins. (Signed) J. Zach Spearing. Signed) R. B. Howell, Attys.

Petition allowed Nov. 25/21. (Signed) W. I. Grubb, District udge.

2 *Order.*

The above and foregoing petition of Charles Glen Collins praying hat he be allowed to appeal to the Supreme Court of the United tates from the judgment and decree rendered and signed in these roceedings on the 25th day of October, 1921 and that a certified opy of the transcript of the record upon the said order and decree e transmitted to the Supreme Court of the United States, and the ourt being of the opinion that the said Charles Glen Collins is ntitled to the appeal as prayed for by him,

It is ordered that an appeal to the Supreme Court of the United tates from the judgment and decree rendered and signed in these roceedings on the 25th day of October, 1921 be and the same is ereby allowed and that a certified transcript of the record of all ie proceedings herein and of the returns and pleadings in this se duly authenticated be forthwith transmitted to the Supreme ourt of the United States.

It is further ordered, that the bond of appeal conditioned as ie law directs and for the payment of damages and costs of appeal, r any other penalty that mey be inflicted or named, be and the me is hereby fixed at the sum of Five Hundred & 00/000 $500.00) Dollars and that a stay of procedure upon the said judg- ent and decree appealed from be and the same is hereby granted. This 25 day of Nov. 1921. (Signed) W. I. Grubb, District Judge.

Assignment of Errors.

[Filed Nov. 28, 1921.]

United States District Court in and for the Eastern District of Louisiana.

No. 15959.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

Assignment of Errors.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

Now comes Charles Glen Collins, petitioner herein by J. Zach Spearing, his Attorney, and makes and files the following assignment of errors which he alleges occurred upon the hearing herein and in the entry of the judgment or decree in these proceedings from which the said Charles Glen Collins has taken an appeal and upon which assignment of errors he will rely in the prosecution of his appeal herein.

73 1st. The Court erred in dismissing the writ of habeas corpus as to the charge by Mahomed Alli Zaimel Ali Raza, sued out by petitioner herein.

2nd. The Court erred in denying the writ of habeas corpus as to one affidavit and granting the writ of habeas corpus in part as to the other affidavits, but the Court should have granted the writ of habeas corpus in its entirely and should have ordered petitioner discharged from custody on each and all of the charges.

3rd. The Court erred in holding that petitioner was lawfully held in custody by the Marshal of the United States for the Eastern District of Louisiana to await the action of the Department of State of the United States upon the application to extradite him to the City of Bombay in British India.

4th. The Court erred in holding that petitioner was lawfully held, imprisoned and restrained of his liberty by the Marshal of the United States for the Eastern District of Louisiana and was not entitled to be discharged therefrom.

5th. The Court erred in holding that the informations filed against petitioner before the Esplanade Police Court of Bombay, British India charging petitioner with having committed the offense of cheating under Section 420 of the Indian Penal Code were sufficient under the extradition treaties between the Government of the United States and the Government of Great Britian proclaimed November 10th, 1842 and the supplementary extradition treaty between the same Countries proclaimed April 22nd, 1901, or any other convention or treaty in force between those two Countries, to arrest, hold or

in petitioner, or to justify his extradition because the offense of
ting is not one of the offenses for which a person, and partic-
ly for which petitioner, could be extradited.
h. The Court erred in not holding that petitioner was denied
process of law because Hon. Rufus E. Foster, United States
rict Judge sitting as Extradition Commissioner, refused pe-
ner the right and opportunity accorded him by the laws of
practice in the State of Louisiana to testify or to make a vol-
ry declaration in his own behalf and also of the refusal by the
Extradition Commissioner of the right and opportunity ac-
ed him by the said laws and practice in the State of Louisiana
ave other witnesses than himself examin- in his own behalf and
like refusal of the right and opportunity to produce and file in
ence documentary evidence in his behalf.
h. The Court erred in not holding that petitioner was denied
Hon. Rufus E. Foster, the right granted to and possessed by
under the tenth article of the treaty between the United States
the Kingdom of Great Britain proclaimed November 10th, 1842,
e protection of the laws of and practice in the State of Louisiana
in which petitioner was arrested and according to the laws of
and practice in which said State petitioner had and has the
right to testify and make a voluntary declaration in his own
lf and to have witnesses examined and to introduce and to have
itted documentary evidence in his own behalf before a Commit-
Judge or Magistrate.
h. The Court erred in not holding that petitioner was denied
he said Hon. Rufus E. Foster the protection granted to and
essed by him under the fifth amendment of the Constitution of
United States of America in that he had been and is being
ived of his liberty without due process of law because under the
ies and conventions between the Kingdom of Great Britain and
United States of America it is expressly provided that no person
be surrendered by either of the two Nations concerned except
evidence of criminality "as, according to the laws of the place
e the fugitive, or person so charged, shall be found, would
fy his apprehension and commitment for trial, if the crime or
se had there been committed," and that according to the laws
nd practice in the State of Louisiana in which State petitioner
arrested he was entitled to testify in his own behalf and was
entitled to have witnesses examined in his own behalf before the
mitting Judge or Magistrate and likewise to have introduced
admitted documentary evidence in his own behalf and that
and all of his rights were denied to your petitioner by the said
. Rufus E. Foster.
h. The Court erred in not holding that no legal proof was sub-
ed to or produced before the Hon. Rufus E. Foster, of the com-
ion by petitioner of the crime or offense mentioned in the com-
nts of Thomas F. Carlisle, British Consul General at the City of
Orleans, or of the crime or offense mentioned in the authenti-
g certificates attached to the documents which were admitted in
ence or mentioned in the information or charges filed before the

Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate of said Police Court, or of either of said crimes or offenses, or of any other crime or offense.

10th. The Court erred in not holding that no legal proof was submit-ed to or produced before Hon. Rufus E. Foster, on which reasonable ground for a belief that petitioner had committed the crime or offense mentioned in the complaints of Hon. Thomas F. Carlisle, British Consul General at the City of New Orleans or mentioned in the authenticating certificates attached to the documents offered in evidence or mentioned in the informations or charges filed before the said Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate of said Police Court, or of either or any of said crimes or offenses, or any other crime or offense could be based.

11th. The Court erred in not holding that none of the evidence papers or exhibits which were submitted to the Hon. Rufus E. Foster and by him admitted in evidence over the objection and pro-
75 test of petitioner were authenticated in accordance with the provisions of the statutes in such cases made and provided so as to entitle*d* them to be received in evidence in the proceedings before the said Hon. Rufus E. Foster.

12th. The Court erred in not holding that the transactions referred to in the depositions and documents which were admitted in evidence over the objection and protest of petitioner are not crimes nor offenses under the laws of the State of Louisiana in which your petitioner was arrested, nor under the laws of British India, where it is alleged the said transactions took place, but the Court should have held that the said transactions constituted and were mere commercial transactions in which credit was freely and voluntarily extended.

13th. The Court erred in not holding that even if the said transactions are criminal according to the laws of British India, they do not constitute an offense which, under the treaties and conventions in force between tthe United States and the Kingdom of Great Britain, are extraditable or for which extradition can be had.

14th. The Court erred in not holding that there is a fatal variance in each of the three sets of documents from Bombay, India, offered, introduced and admitted in evidence over protest by petitioner between the charge brought against petitioner in the Esplanade Police Court of Bombay, India, which is the offense of cheating under Section 420 of the Penal Code of India and the offense mentioned in the authenticating certificates of the Secretary for the Indian Government and the Consul General of the United States at Calcutta, India, which is the offense of obtaining valuable property by false pretenses, which said two offenses are not the same but are different in nature and character in this that the offense of cheating under Section 420 of the Penal Code of India which is not extraditable under the treaties and conventions existing between the United States and the Kingdom of Great Britain is the failure to perform a promise of future payment where the intent not to perform is proved to have existed at the time of making of the promise and the gist of the of-

fense of obtaining valuable property by false pretenses which is extraditable is, according to the laws enforced in the State of Louisiana, a false representation concerning a past or present fact.

15th. The Court erred in not holding that petitioner was being deprived of his liberty without due process of law and in violation of the provisions of the treaties and conventions between the United States and the Kingdom of Great Britain and particularly in violation of the provisions of the tenth article of the treaty between the said two countries dated August 9th, 1842, and proclaimed November 10th, 1842, and in violation of the fifth amendment to the Constitution of the United States of America and in violation of the laws of Louisiana.

76 16th. The Court erred in disregarding, modifying and changing the judgment which was rendered in these proceedings on the 21st day of February, 1919.

And petitioner, Charles Glen Collins, prays that the judgment and decree made and rendered herein on the 25th day of October 1921 for the errors aforesaid and for other errors in the record and proceedings herein may be reversed and set aside and that petitioner be restored to all things which he lost or has lost by reason of the said judgment and that the United States District Court for the Eastern District of Louisiana be directed to enter in favor of petitioner a judgment and decree maintaining the writ of habeas corpus issued in these proceedings and discharging petitioner from the custody of the Marshal of the United States for the Eastern District of Louisiana and restoring petitioner to his liberty. (Signed) Charles Glen Collins,(Signed) J. Zach Spearing, (Signed) R. B. Howell, Attys.

Presented Nov. 25/21. (Signed) W. I. Grubb, D. J.

Bond of Appeal.

[Filed Nov. 28, 1921.]

Bond.

Know all men by these presents, That, We, Charles Glen Collins, as principal, and United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto Frank M. Miller, U. S. Marshal and Harry J. Carter, Clerk of the U. S. District Court, both of the Eastern District of Louisiana, and any and all others concerned in the full and just sum of Five Hundred & 00/100 ($500.00) dollars to be paid to the said parties or any of them, their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of November in the year of our Lord, One thousand nine hundred and twenty-one.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said court, entitled in the matter of the Applica-

tion of Charles Glen Collins for Writ of Habeas Corpus and Certiorari a judgment was rendered against the said Charles Glen Collins and the said Charles Glen Collins having obtained an order of appeal and filed a copy thereof in the Clerk's office of the said
77 Court to reverse the judgment in the aforesaid suit, and a citation directed to Victor J. Loisel, U. S. Marshal for the Eastern District of Louisiana citing and admonishing him to be and appear before the United States Supreme Court, to be holden at Washington, District of Columbia, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Charles Glen Collins shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue. (Signed) United States Fidelity & Guaranty Co., By George M. B. Conrad, Attorney in Fact. (Signed) Charles Glen Collins. [Seal.] Sealed and delivered in presence of (Signed) J. Zach Spearing. Approved by: W. I. Grubb, D. J. Nov. 25/21.

Bail Bond.

[Filed Dec. 3, 1921.]

UNITED STATES OF AMERICA,
Eastern District of Louisiana,
New Orleans Division, ss:

Be it remembered, that on this 3rd day of December, A. D., 1921, before me, Henry J. Carter, Clerk, United States District Court for the Eastern District of Louisiana, New Orleans Division, personally came Charles Glen Collins, Principal and John W. McGrath, of #2255 Carondelet St., New Orleans, Louisiana, Surety and jointly and severally acknowledged themselves to owe the United States of America the sum of Ten Thousand Dollars, to be levied on their goods and chattels, land and tenements, if default be made in the condition following, to-wit:

The condition of this recognizance is such, that if the said Charles Glen Collins, Principal shall personally appear before the Honorable Rufus E. Foster, United States District Judge of the District Court of the United States in and for the Eastern District of Louisiana on the — day of November term, 1921, to be begun and held at the City of New Orleans, at 11 o'clock, A. M., and from time to time thereafter to which the case may be continued and then and there to appear before the said Judge and the said Court at the term above specified and from term to term thereafter and shall abide
78 whatever order and judgment of the said Court and the said Judge named, in the matter entitled "United States Ex Rel. Charles Glen Collins, versus Frank M. Miller, United States Marshal et al., No. 15,959 of the docket of the United States District Court for the Eastern District of Louisiana, and shall not depart the Court without leave, then and in that case, this obligation is to be null and

void, but otherwise to be in full force and effect. (Signed) Charles Glen Collins. (Signed) J. W. McGrath.

Taken and acknowledged before me on the day and year first above written. (Signed) H. J. Carter, Clerk United States District Court, Eastern District of Louisiana. [Seal.]

UNITED STATES OF AMERICA,
Eastern District of Louisiana,
New Orleans Division, ss:

John W. McGrath, surety on the annexed recognizance being duly sworn, deposes and says, that he resides at #2255 Carondelet Street, in the City of New Orleans, Louisiana, in said District that he is a freeholder in the City of Brookhaven, Mississippi, that he is worth the sum of Ten Thousand ($10,000.00) Dollars over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of real estate consisting of lots and stocks. (Signed) J. W. McGrath.

Sworn to and subscribed before me this 3rd day of December, A D., 1921. (Signed) H. J. Carter, Clerk United States District Court, Eastern District of Louisiana. [Seal.]

Clerk's Office.

I, H. J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 69 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors, and proceedings in the case entitled United States, ex rel. Charles Glen Collins versus Frank M. Miller, United States Marshal, No. 15,959 of the Docket of said Court, as made in accordance with the Agreement of Counsel for transcript, copied therein.

79 Witness my hand and the seal of the said court at the City of New Orleans, La., this 20 day of December, A. D., 1921. H. J. Carter, Clerk. [Seal U. S. District Court, Eastern District of Louisiana.]

Mr. Spearing.

THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Victor Loisel, United States Marshal for the Eastern District of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a petition and order of appeal filed in the Clerk's Office of the District

Court of the United States for the Eastern District of Louisiana, wherein Charles Glen Collins, is Appellant, and Victor Loisel, United States Marshal for the Eastern District of Louisiana, is Appellee, in the cause entitled "United States, ex rel., Charles Glen Collins, versus Frank M. Miller, United States Marshal," No. 15,959 of the Docket of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to show cause, if any there be, why the judgment rendered against the said Charles Glen Collins, as in said petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus E. Foster, Judge of the United States District Court, at New Orleans, La., this 1st day of December in the year of our Lord one thousand nine hundred and twenty-one. (Signed) Rufus E. Foster, Judge. [Seal.]

Clerk's Office.

A true copy. H. J. Carter, Clerk. New Orleans, La., Dec. 1, 1921.

[Endorsed:] 4620. Return. United States District Court, Eastern District of Louisiana. No. 15,959. United States ex rel., Charles Glen Collins, vs. Frank M. Miller, United States Marshal. Citation of Appeal. Marshal's Return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Dec. 2, 1921. Hu. J. Loisel, Dep. Clerk.

80 Received by U. S. Marshal, New Orleans, La., December 1, 1921, and on the 2nd day of December, 1921, I served the original of which this writ is a certified copy on Victor Loisel, U. S. Marshal for the Eastern District of Louisiana, by handing the same to him in person. Victor Loisel, U. S. Marshal, By T. I. Galbrith, Dep. U. S. Marshal.

Endorsed on cover: File No. 28,627. E. Louisiana D. C. U. S. Term No. 672. Charles Glen Collins, appellant, vs. Victor Loisel, U. S. Marshal for the eastern district of Louisiana. Filed December 31st, 1921. File No. 28,627.

81 STIPULATION AND ADDITION TO RECORD.

Supreme Court of the United States, October Term, 1921.

No. 672.

CHARLES GLEN COLLINS, Appellant,

vs.

VICTOR LOISEL, United States Marshal for the Eastern District of Louisiana.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

Record filed December 31, 1921. Stipulation and addition to record filed April 6, 1922. (28,627.)

82 Supreme Court of the United States, October Term, 1921.

No. 672.

CHARLES GLEN COLLINS, Appellant,

vs.

VICTOR LOISEL, United States Marshal for the Eastern District of Louisiana.

Stipulation.

It is agreed and stipulated by counsel for Charles Glen Collins, Appellant, and Victor Loisel, United States Marshal, Appellee, that the printed transcript in Charles Glen Collins, Appellant, versus Frank M. Miller, United States Marshal for the Eastern District of Louisiana, No. 977 and in Tom F. Carlisle, British Counsel General versus Charles Glen Collins, No. 978, October term 1918 of the Supreme Court of the United States, a printed copy of which accompanies this stipulation, shall be printed and made a part of the transcript of the record in this case being No. 672 October Term 1921 of the Supreme Court of United States.

New Orleans, La., March 31st, 1922. Guion Miller, J. Zach Spearing, Attorneys for Charles Glen Collins, Appellant. Robert H. Marr, Attorney for Victor Loisel, U. S. Marshal.

83 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Lo
New Orleans Division.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS, Appell

versus

FRANK M. MILLER, United States Marshal, Appellee

J. Zach Spearing, Esquire, for Appellant.
Robert H. Marr, Esquire, for Appellee.

Appeal from the District Court of the United States for the
District of Louisiana, New Orleans Division, to the Suprem
of the United States, Returnable within Thirty (30) Da
the Eighth (8th) Day of March, 1919, at the City of W
ton, D. C.

In the United States District Court for the Eastern Dis
Louisiana.

In the Matter of the Application of CHARLES GLEN COLL
Writs of Habeas Corpus and Certiorari.

Petition.

[Filed January 8, 1919.]

To the United States District Court for the Eastern Dis
Louisiana:

The petition of Charles Glen Collins respectfully represe
shows to this Honorable Court, as follows:

1. Your petitioner is imprisoned and restrained of his lib
the House of Detention in the City of New Orleans, in th
of Louisiana, in the custody of Frank M. Miller, United
Marshal for the Eastern District of Louisiana, by virtue of t
tain warrants dated the 31st day of October, 1918 and the 2
of November, 1918, respectively, issued by Honorable Ru
Foster, United States District Judge for the Eastern Dis
Louisiana, copies of which warrants are hereto annexed, r
respectively, "Exhibit A" and "Exhibit B," and made a part
2. On the 12th day of November, 1917, your petitioner
rested and taken into custody by the said Frank M. Miller,
States Marshal for the Eastern District of Louisiana,
84 and by virtue of a warrant dated the 5th day of Nov
1917, issued by Honorable Sam M. Hitchcock, United

Commissioner for Southern District of New York, a copy of which warrant is also hereto annexed, marked "Exhibit C,' and made a part hereof.

3. The said last mentioned warrant was issued by the said Commissioner upon a complaint purporting to have been made by C. Olive Bayley, Esquire, British Consul-General at the City of New York in the State of New York, before the said Commissioner, a copy of which complaint is also hereto annexed, marked "Exhibit D" and made a part hereof.

4. On the 18th day of October 1918, your petitioner was arrested and taken into custody by the said United States Marshal for the Eastern District of Louisiana, under and by virtue of a warrant dated the 18th day of October 1918, issued by Honorable Rufus E. Foster, United States Judge for the Eastern District of Louisiana, a copy of which warrant is also hereto annexed, marked "Exhibit E," and made a part hereof.

5. The said last mentioned warrant was issued by the said Judge upon a complaint purporting to have been made by Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans in the State of Louisiana, before the said Judge, a copy of which complaint is also hereto annexed, marked "Exhibit F," and made a part hereof.

6. On the 18th day of October, 1918 and again on the 8th day of November 1918, your petitioner was arrested and taken into custody by the said United States Marshal under and by virtue of two warrants dated the 18th day of October 1918 and the 8th day of November 1918 respectively, issued by Honorable Rufus E. Foster, United States Judge for the Eastern District of Louisiana, a copy of which warrants are also annexed hereto, marked "Exhibit C," and made a part hereof.

7. The last mentioned warrant was issued by the said Judge upon complaints purporting to have been made by Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans in the State of Louisiana, before the said Commissioner, a copy of which complaints are also hereto annexed, marked "Exhibit H," and made a part hereof.

8. On the 28th day of October 1918, your petitioner was arraigned before the Honorable Rufus E. Foster, one of the Judges of this Court, and after a hearing held on the 28th day of October 1918, and the 30th day of October, 1918, was remanded to the custody of the said Marshal to await the action of the Secretary of State of the United States in the premises, and the said Honorable Rufus E. Foster then and there issued his warrant (Exhibit A) therefor to the said Marshal, and certified the evidence and the testimony taken before him to the said Secretary of State, and on the same day the said Marshal placed your petitioner in the custody of the Warden of the House of Detention in the City of New Orleans, in the State of Louisiana, where your petitioner now is.

9. On the 21st day of November, 1918, your petitioner was again

arraigned before the Honorable Rufus E. Foster, one of the
85 Judges of this Court, and after a further hearing held on the 21st day of November, 1918, was remanded to the custody of the said Marshal to await the action of the Secretary of State of the United States in the premises, and the said Honorable Rufus E. Foster then and there issued his warrant (Exhibit B) therefor, to the said Marshal, and certified the evidence and the testimony taken before him to the said Secretary of State, and on the same day the said Marshal placed your petitioner in the custody of the Warden of the House of Detention in the City of New Orleans, in the State of Louisiana, where your petitioner now is.

10. Your petitioner's detention and imprisonment is illegal and unconstitutional, because:

(*a*) The aforesaid complaints are based upon certain Informations filed against your petitioner before the Esplanade Police Court of Bombay, India, charging your petitioner with having committed the offense of cheating under Section 420 of the Indian Penal Code, and that such offense is not an extraditable one under any extradition convention or treaty in force between the United States of America and the Kingdom of Great Britain.

(*b*) Your petitioner was denied by the Honorable Rufus E. Foster, at each of the aforesaid hearings, due process of law, in that he was denied the right and opportunity accorded him by the laws of the State of Louisiana, to make a voluntary declaration on his own behalf, and was also denied the right and opportunity accorded him by said laws to have other witnesses than himself examined upon his own behalf.

(*c*) Your petitioner was denied by the Honorable Rufus E. Foster, at each of said hearings, the right possessed by him under the Tenth Article of the Treaty between the United States of America and the Kingdom of Great Britain of August 9th, 1842, to the protection of the laws of the State of Louisiana, in which State your petitioner was arrested; and according to the laws of which State your petitioner had the right to make a voluntary declaration and to have witnesses examined in his own behalf before the committing Judge or Magistrate.

(*d*) Your petitioner was denied by the Honorable Rufus E. Foster, at each of said hearings, the protection of the Fifth Amendment to the Constitution of the United States of America, in that he has been deprived of liberty without due process of law, the treaty between the Kingdom of Great Britain and the United States of America expressly providing that no person shall be surrendered by either of the two Nations concerned except upon evidence of criminality "as, according to the laws of the place where the fugitive, or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been commit-ed," and that according to the laws of the State of Louisiana, in which State your petitioner was arrested, as aforesaid, he was entitled to testify on his own behalf, and also was entitled to have witnesses examined in his own behalf before the committing Judge or Magistrate and that these rights were denied to your petitioner.

(*e*) No legal proof was submitted to, or produced before,
86 the Honorable Rufus E. Foster, of the commission by your petitioner of the crime or offense mentioned in the said complaints of Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans, or of the crime or offense mentioned in the authenticating certificates attached to the documents forwarded to this Country from Bombay, India, or mentioned in the Informations filed before the said Esplanade Police Court, of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate or the Acting Chief Presidency Magistrate of said Police Court, or of either or any of said crimes or offenses, or of any other crime or offense.

(*f*) No legal proof was submitted to, or produced before, the Honorable Rufus E. Foster, on which reasonable ground for a belief that your petitioner had committed the crime or offense mentioned in the said complaints of Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans, or the crime or offense mentioned in the authenticating certificates attached to the documents forwarded to this Country from Bombay, India, or mentioned in the Informations filed before the said Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate or the Acting Chief Presidency Magistrate of said Police Court, or either or any of said crimes or offenses, or any other crime or offense, could be based.

(*g*) None of the evidence, papers and exhibits which were submitted to the Honorable Rufus E. Foster, over the objection and protest of your petitioner, were authenticated in accordance with the provisions of the statutes in such case made and provided, so as to entitled them to be received in evidence in the said proceeding.

(*h*) The transactions proved by the depositions that were admitted in evidence over the objection and protest of your petitioner are not criminal in their nature, according to the laws of the State of Louisiana, in which State your petitioner was arrested and they are not even criminal according to the laws of British India, but constitute commercial transactions in which credit was freely and voluntarily extended to your petitioner by each and every one of the merchants therein named.

(*i*) Even if said transactions are criminal according to the laws of British-India, they constitute, under said laws, the offense of cheating as prescribed by Section 420 of the Penal Code of India and the said offense is not an extraditable one under either of the three extradition treaties or conventions in force between the United States of America and the Kingdom of Great Britain.

(*j*) There is a fatal variance in each of the three sets of documents forwarded to this Country from Bombay, India, in that in each set of documents it appears that the charge brought against your petitioner is that of the offense of cheating under Section 420 of the Penal Code of India, while in the authenticated certificates of the Secretary for the Indian Government and of the Consul-General of the United States at Calcutta, India, the charges brought

against your petitioner, are stated to have been of an entirely
87 different nature and character; namely, that of obtaining valuable property by false pretenses.

(*k*) There is a material and radical difference between the non-extraditable offense of cheating under Section 420 of the Penal Code of India, and the extraditable offense of obtaining property by false pretenses, in that the gist of the Indian offense of cheating is the failure to perform a promise of future payment where the intent not to perform is proved to have existed at the time of the making of the promise, while the gist of the extraditable offense of obtaining property by false pretenses is, according to the laws in force in the State of Louisiana, a false representation concerning a past or present fact and that a promise is not a pretense within the meaning of the Louisiana statute, even when the party making the same does not intend to keep it.

11. Your petitioner is advised and verily believes it to be true that his imprisonment and detention aforesaid is illegal and unconstitutional and that the Honorable Rufus E. Foster was without jurisdiction to commit him to the custody of the Marshal to await the action of the Secretary of State, as aforesaid, for the reasons aforesaid, and that your petitioner has been, and is being deprived of his liberty without due process of law, in violation of the said treaty and also in violation of the Fifth Amendment to the Constitution of the United States of America.

Wherefore, in order that your petitioner may be relieved of his unlawful detention and imprisonment, your petitioner prays that writs of habeas corpus and certiorari may issue out of this Court directed to the person or persons having your petitioner in custody and to the said Honorable Rufus E. Foster, commanding them, and each of them, to produce the body of your petitioner before this Court, and to return all the proceedings had against him to this Court, and to do and receive what shall then and there be considered in the matter.

No previous application has been made for the said writs. (Signed) J. Zach Spearing, Attorney for Petitioner. (Signed) Charles Glen Collins.

STATE OF LOUISIANA,
City of New Orleans, ss:

Before the subscriber, a Notary Public in and for said City and State, personally appeared Charles Glen Collins, who being duly sworn, deposes and says:

That he is the petitioner herein; that he has read, and knows the contents of the foregoing petition, and that the same is true of his own knowledge, except as to the matter therein stated to be alleged upon information and belief, and as to that matter he believes it to be true. (Signed) Charles Glen Collins.

88 Sworn to before me, this 27th day of December, 1918.
(Signed) J. Zach Spearing, Notary Public. [Seal.]

To the Clerk: Let a writ issue as prayed for, returnable Saturday, January 11th, at 10 A. M.

Given this 8th day of January, 1919. (Signed) W. I. Grubb, District Judge.

Writ of Habeas Corpus.

Issued January 8, 1919.

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

FRANK M. MILLER, U. S. Marshal.

The President of the United States to Frank M. Miller, United States Marshal for the Eastern District of Louisiana, Greeting:

You are hereby commanded to bring and produce before this Court on Saturday, the 11th day of January 1919, at 10 a. m. the body of Charles Glen Collins, now in your custody in the House of Detention in the City of New Orleans, together with the cause of his caption and detention; there to abide what shall be awarded by the Court in the premises, and herein fail not under penalty of the law.

Witness, the Honorable Rufus D. Foster, Judge of said Court, at New Orleans, La., this 8th day of January in the year of our Lord one thousand nine hundred and nineteen. (Signed) H. J. Carter, Clerk. [Seal.]

Clerk's Office.

A true copy. (Signed) H. J. Carter, Clerk. New Orleans, La., January 8, 1919.

89

Marshal's Return.

[Filed February 10, 1919.]

Received by U. S. Marshal, New Orleans, La., Jan. 8/18, and on the same day month and year I served the original of which this is a certified copy, on Frank M. Miller, United States Marshal, for the Eastern District of Louisiana, by handing same to him in person at New Orleans, La. (Signed) Frank M. Miller, U. S. Marshal. Sam W. Taylor, Chief Deputy.

Order Continuing Case Indefinitely.

Extract from the Minutes, November Term, 1918.

New Orleans, Saturday, January 11th, 1919.

Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.
" Hon. W. I. Grubb, Judge.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

FRANK M. MILLER, United States Marshal.

Proceedings Before Hon. W. I. Grubb, District Judge.

By agreement of counsel for the respective parties;
It is ordered by the Court that the application for a writ of habeas corpus fixed for trial this day, be continued indefinitely.

Return of Frank M. Miller, United States Marshal.

[Filed Feb 15, 1919.]

In the United States District Court for the Eastern District of Louisiana.

In the Matter of the Application of CHARLES GLEN COLLINS for Writ of Habeas Corpus and Certiorari.

Now, comes Frank M. Miller, United States Marshal for the Eastern District of Louisiana, who, by way of return to the writs herein applied for, says:

90 1.

That Charles Glen Collins is held by him in pursuance of judgments of the Honorable Rufus E. Foster, Judge of this Court, which said judgments read as follows:

"I find that the evidence produced against said Charles Glen Collins is sufficient in law to justify his commitment on charges of having obtained property by false pretenses.

It is further ordered, adjudged and decreed that said Charles Glen *Foster,* be committed to the House of Detention to be held for extradition to British India for trial on charges pending against him in the Chief Presidency Magistrate's Court at Bombay India, to abide the order of the President of the United States until the further orders of the Court."

That the said judgments were based upon findings on three separate affidavits charging said Collins with being a fugitive from the justice of India upon charges of obtaining property by false pretenses, and upon which said judgments warrants were issued and placed in the hands of your respondent, as recited by relator in his application for writs.

2.

Now, your respondent shows that the detention of relator is legal and constitutional, and respondent shows that, in each of said three cases, applications were made for the extradition of said Colonel Charles Glen Collins on the ground that, in each of said cases, he stood charged in India with the crime of obtaining valuable property by false pretenses.

3.

Now, your respondent further shows that, in each of said cases, it is certified by A. H. Grant, Secretary to the Government of India in the Foreign Political Department, that the relator is:

"Charged with the crime of obtaining valuable property by false pretenses, alleged to have been committed in Bombay."

That, as to one of said charges, A. H. S. Aston, Chief Magistrate certified:

"Whereas, one Lieutenant-Colonel Charles Glen Collins stands charged with the offense of obtaining property by false pretenses under Section 420 of the Indian Penal Code, within the jurisdiction of my Court, in respect of jewelry valued at about two thousand pounds, the property of the firm of Ganeshilall & Sons, jewelers of Calcutta."

and said A. H. S. Aston, Chief Presidency Magistrate, as to another of said charges, certifies:

"Whereas, one Lieutenant-Colonel Charles Glen Collins stands charged with the offense of obtaining property by false pretenses at Bombay, under Section 420 of the Indian Penal Code, with
91 respect of a pearl button valued at seventeen hundred pounds, the property of Mahomed Helo Zaimel Ali Raa."

4.

And, your respondent further shows that the evidence deduced on the trial of each of these three several cases discloses a state of facts constituting crime, both under the laws of Louisiana, and under the laws of British India.

5.

Your respondent further shows that relator at no time offered to make any voluntary statement, but offered himself as a witness on his own behalf; and respondent shows that, in two of said cases, after

having been sworn as a witness, the Judge declined to hear any evidence in defense of the charge, holding:

"No question of defense can come before this Court in an extradition matter; that is a question for the Court when the case is tried in the country that requests his extradition, the only question here is the question as to the identity of the accused, and the question whether or not he was in India at the time this alleged offence is supposed to have been committed. There are two things the defendant can show, either he is not the man wanted, or that he was not there at the time the offence is supposed to have been committed. Now, he was there at the time, and he admits he is the man."

To which ruling of the Court, Counsel for relator replied, "There is no doubt about that."

6.

And, respondent further shows that the other evidence offered by relator in his own behalf would not have been admissible, even had relator been on trial for the commission of the offence charged.

7.

And, your respondent further shows that, in the Raza case, said Collins offered himself as a witness in his own behalf and was duly sworn, examined, cross-examined and re-examined.

8.

And, your respondent further shows that the proof submitted was legal and competent, and that the sufficiency of said proof cannot be inquired into on habeas corpus.

9.

And, your respondent further shows that all the documents admitted in evidence by said Honorable Rufus E. Foster were authenticated, in accordance with the provision of law.

92 10.

And, your respondent further shows that the transactions disclosed by the evidence in each of said three several cases, constituted the obtaining of articles by false pretenses, and discloses a state of facts punishable as crime, both by the law of Louisiana and by the law of British India, as abundantly shown by the testimony of relator, examined as witness in his own behalf.

11.

And, your respondent further shows that there is no variance in the documents forwarded from Bombay, as hereinabove set out; in

two of said cases, the charge is distinctly stated as that of obtaining property by false pretenses, which statement is contained both in the certificate of the Magistrate, and in the request for extradition; that, in the other of said cases, the affidavit is for cheating under the Penal Code of India, Section 420, and the request is for extradition to stand trial on a charge of obtaining by false pretenses. And, your respondent shows that, in said case last mentioned, the evidence discloses an obtaining by false pretenses.

12.

And, your respondent further shows that, in all three cases, the evidence disclosed the commission in British India of an extraditable offence.

Wherefore, the foregoing considered, respondent prays that the writs herein applied for be refused at relator's costs.

All other necessary and proper in the premises are also prayed for. (Signed) Robert H. Marr, For Respondent.

33 *Record, Exhibits, Evidence, Testimony, and Proceedings in the Matter of the Extradition Proceedings against Charles Glen Collins, Nos.* 15927, 15928, *and* 15936 (Consolidated), *Filed February* 21, 1919, *before Hon. W. I. Grubb, United States District Judge.*

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Nos. 15927, 15928, and 15936 (Consolidated).

In the Matter of Extradition Proceedings versus CHARLES GLEN COLLINS.

Record, Exhibits and Testimony Transmitted by Hon. Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana, to the Honorable Secretary of State of the United States of America, Department of State, Washington, D. C.

AFFIDAVITS OF COMPLAINANT, EXHIBITS, CERTIFICATES, AND DEPOSITIONS OF WITNESSES.

Affidavit of Gerard M. Loly, British Vice Consul.

[Filed Oct. 16, 1918.]

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Gerard M. Loly, who being by me first duly sworn, deposed

and said that he is British Vice Consul at the City of New Orleans that Charles Glen Collins, having in British India committed th crime of obtaining goods by false pretenses, stands charged in th Chief Presidency Magistrate's Court, at Bombay, India, with having on or about February 7th, 1917, fraudulently, falsely and feloniously pretended to the commercial firm of Pohoomul Bros. that he, th said Collins, was a wealthy man; that he, the said Collins, then an there had a right to draw a draft for five thousand pounds on Messrs E. Curtice & Company, 8 Clarges Street, London; Whereas in truth and in fact, the said Collins was not then and there a wealthy man but on the contrary was a bankrupt; that he, the said Collins, ha no right to draw a draft for five thousand pounds or for any amount on said Messrs. E. Curtice & Company; that by means of said false fraudulent and felonious pretenses, said Collins then and there ob-

tained from said commercial firm of Pohoomul Bros. a pear
94 necklace, valued at seventy-five thousand rupees; of the prop-

erty of the said commercial firm of Pohoomul Bros.; that th said false and fraudulent pretenses were, to the knowledge of said Collins, at the time of making same false and fraudulent; and affiant further says that said Collins is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

Affiant further says that Thomas F. Carlisle, the British Consul General at this Port, is confined to his home by illness, and therefore cannot make this affidavit, and that affiant makes the same upon in structions received from the said Thomas F. Carlisle. (Signed) Gerard M. Loly.

Sworn to and subscribed before me this 16 day of October, 1918. (Signed) Rufus E. Foster, Judge.

Affidavit of Tom F. Carlisle, British Consul General.

[Filed Oct. 26, 1918.]

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans:

Before me, the undersigned authority, personally came and ap peared Tom F. Carlisle, who being by me first duly sworn, depose and said that he is British Consul General at the City of New Or leans; that he is informed and being so informed, verily believes that Charles Glen Collins having committed the crime of obtaining property by false pretenses, stands charged in the Chief Presidency Magistrate's Court at Bombay, India, with having, on or about Feb ruary 7th, 1917, fraudulently, feloniously and falsely pretended to the commercial firm of Pohoomul Bros. that he, the said Collins was a wealthy man; that he, the said Collins, then and there had a right to draw a draft for Five thousand Pounds on Messrs. E. Curtice

& Company, 8 Clarges Street, London, and that in consequence thereof, said draft would be paid; Whereas, in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary, was a bankrupt; that he, the said Collins, had not the right to draw a draft for five thousand Pounds on said Messrs. E. Curtice & Company, and then and there well knew that said draft would not be paid; that by means of said false, fraudulent and felonious pretences, the said Collins then and there obtained from said commercial firm of Pohoomul Bros. a pearl necklace valued at seventy-five thousand rupees, of the property of the said commercial firm of Pohoomul Bros.; that the said false and fraudulent pretences were, to the knowledge of said Collins at the time of making them false and fraudulent, and affiant further says that said Collins is presently within the City of New Orleans, and within the jurisdiction
95 of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further states that the source of his information and belief, upon which information and belief this affidavit is made, is as follows:

The evidence taken on said charge in the Esplanade Police Court, Bombay, duly certified to under the provisions of Section 5271 of the Revised Statutes of the United States; the evidence taken before Sir John Dickinson, Knight, Bow Street Police Court, London, duly certified to under Section 5271 of the Revised Statutes of the United States; the evidence taken before Alexander Stuart Duff Thompson, at Glasgow, salaried sheriff of the Sheriffdom of Lanarkshire, duly certified to under Section 5271 of the Revised Statutes of the United States, all of which said evidence is hereunto annexed as part hereof; and a telegram in Code from the British Secretary of State, for Foreign Affairs, received by the British Consul General at New York on November 3rd, 1917, a Code Translation whereof is hereto annexed as part hereof. (Signed) T. F. Carlisle.

Sworn to and subscribed before me this 26 day of October, 1918. (Signed) Rufus E. Foster, Judge.

Translation of Telegram in Code from the British Secretary of State for Foreign Affairs, Received by the British Consul General at New York on November 3rd, 1917.

No. 738.

Following telegram has been received from Governor of Bombay October 25th communicated by Secretary of State for India Begins. No. 8237. A warrant has been issued in this country for the arrest of the undermentioned person for the undermentioned offence. Apply for provisional arrest with a view to extradiction. Necessary documents will be sent as soon as possible through regular channels. Please acknowledge receipt of this by cable and also telegraph when

accused has been arrested. Charles G. Collins till recently British army officer obtaining by false pretenses pearl necklace valued 75,000 rupees from Pohoomull Brothers at Bombay February 2nd last representing himself Lieutenant Colonel attached for duty to How Battalion Royal Marines on furlough. Left Bombay for Vancouver February 27th leaving draft dishonoured on presentation. About 6 feet holds himself upright athletic complexion florid hair scanty approximate weight about 13 or 14 stone recently at Quebec whence police state left October 1st for Ritz Carlton Hotel New York. Messrs. Pinkerton are understood to have been communicated with already. Person able to identify accused will be sent Ends.

Please take necessary action. Any further enquiry necessary should be addressed to Governor of Bombay direct. Secretary of State for India presumes application will be made to Emigra-
96 tion authorities if action by them suitable also that if person to identify not needed, Governor of Bombay will be informed. Balfour.

I hereby certify that the above is a true and exact translation of an original telegram in British Government Code from the British Secretary of State for Foreign Affairs to the British Consul General New York which is now in my possession. (Signed) T. F. Carlisle, H. B. M. Consul General. [Seal.] New Orleans, December 17th, 1917.

Certificate of James A. Smith, Consul General for the United States at Calcutta, India.

[Filed —— —, ——.]

Certificate.

I, James A. Smith, Consul-General for the United States in Calcutta, hereby certify that the annexed papers being (1) a warrant of arrest, and (2) copies of prima facie proceedings in the Court of the Chief Presidency Magistrate, Bombay, proposed to be used upon an application for the extradiction from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences alleged to have been committed in Bombay, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of British India, as required by the Act of Congress of August 3rd, 1882. (Signed) Jas. A. Smith, Consul General of the United States of America at Calcutta, India. [Seal.] Calcutta, April 8th, 1918.

Certificate of A. H. Grant, Secretary to the Government of India in the Foreign and Political Department.

[Filed Oct. 30, 1918.]

Certificate.

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Lieutenant Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences, committed in British India, I hereby certify that, to the best of my knowledge and belief, the signatures "Chunilal H. Setalvad" on the warrant of arrest, and on the information and depositions on which the warrant was granted, are the signatures of Chunilal Harilal Setalvad,
97 a Magistrate in British India, having authority to issue and receive the same, and I further certify that such documents so signed by a Magistrate, having jurisdiction in the place where the same were issued and taken, and authenticated by a Secretary to Government and sealed with his official seal, would be received in evidence for similar purposes in the Tribunals of British India. (Signed) A. H. Grant, Secretary of the Government of India in the Foreign and Political Department. [Seal.] Simla, the 2nd April, 1918.

Case No. 533/W. of 1917.

No. 5958 of 1917.

To Arthur Fuller, Inspector, Bombay City Police Force, Bombay:

Whereas one Lieutenant Colonel Charles G. Collins stands charged with the offense of cheating at Bombay under Section 420 Indian Penal Code in respect of a pearl necklace valued at Rs. 75,-000 the property of the firm of Pohoomull Brothers Jewellers of Bombay.

You are hereby directed to arrest the said Lieutenant Colonel Charles G. Collins and to produce him at the Chief Presidency Magistrate's Court at Bombay before such Presidency Magistrate as may then be present.

Herein fail not.

Dated this 11th day of October, 1917. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

In the Court of the Chief Presidency Magistrate, Bombay.

In re UDHARAM PATARBAGH, Manager of the Firm of Pohoomull Brothers, Jewellers, of Bombay, Complainant,

vs.

Lt. Colonel CHARLES G. COLLINS, Accused.

Charge: Cheating, Section 420, I. P. Code.

I the undersigned being the Ag. Chief Presidency Magistrate of Bombay hereby certify that the typed matter contained in the foregoing pages of paper is a true copy of the information of Udharam Patarbagh Manager of the firm of Pohoomull Brothers, Bombay, taken on solemn affirmation before me on the 22nd day of September, 1917, and of the depositions of the said Udharam Partabrai (or Patarbagh), Lokumull Sahijram, John Dunston Sherston Baker, in support thereof sworn and taken before me on the 11th day of October, 1917, and of the further application made by Udharam Partabrai and of my order thereon and of the deposition of Arthur Fuller in support thereof sworn and taken before
98 me on the 19th day of October, 1917, and of the Lists of Exhibits and of exhibits thereto marked A, B, C, D, E, F, G and H and of my certificate.

Given under my hand and the seal of the Court this 19th day of October, 1917. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

In the Esplanade Police Court of Bombay.

UDHARAM PATARBAGH, Complainant,

vs.

Lieutenant Colonel CHARLES G. COLLINS, Accused.

The information of Udharam Patarbagh of Bombay Hindoo Inhabitant the Manager of Pohoomull Brothers a firm carrying on business at Apollo Bunde Bombay and elsewhere solemnly affirm this — day of September, 1917, before the Presidency Magistrate Bombay, Shew-th:

1. That your complainant is the manager in Bombay of Pohoomull Brothers a firm of jewellers, silk merchants and curio dealers who carry on business inter alia at Apollo Bunder Bombay.

2. The accused described himself as Lieut. Col. Charles G. Collins of the Howe Battalion, Royal Naval Division and it has been ascertained that he is now resident at Chateau Frontenac Quebec and it is believed he is attached to the Ottawa Militia.

3. On or about the 20th December, 1916, the accused in company with one Mrs. Olsan, and a Mrs. Elsie Muntz believed to be a divorcee and the fiancee of the accused were staying at the Taj Mahal Hotel Bombay and they visited your complainant's shop and made some small purchases for which they paid cash.

4. On the 23rd December, 1916, the accused purchased a silk rug from your complainant for Rs. 650 and paid for it by a cheque on Thomas Cook & Son, Bombay.

5. About this time the accused and Mrs. Olsan and Mrs. Muntz left the Taj Mahal Hotel and went to reside in a bungalow in Harkness Road Malbar Hill.

6. A few days later the accused and Mrs. Muntz called at your complainant's shop and asked to see some pearl necklaces of the value of about Rs. 75,000. An appointment was made at the accused residence to which your complainant was to take some necklaces and this was done and Mrs. Muntz selected a pearl necklace of the value of Rs. 72,250 but it was not then purchased.

7. On the 30th January, 1917, the accused bought a pearl ring for Rs. 1,000 for which he paid. On that day the accused and Mrs. Muntz said they wanted thirteen pearls in the necklace altered. It was not possible to alter the required number of pearls but seven were altered bringing up the value of the necklace to Rs. 75,250.

8. On the 2nd February, 1917, the accused asked your complainant to call at his bungalow and Mr. Lokoomull Sahigram a member of the firm of Pohoomull Brothers and Tojoomul Dingomull a manager of the firm attended at the bungalow.

9. The accused then purchased the necklace for Rs. 75,000 and promised to pay for the same. The accused gave your complainant's firm a draft for £5000 on Messrs. E. Curtice and Company 8 Clarges Street London in payment. Your complainant says that the accused well knew that the said draft would not be paid.

10. Your complainant's firm were not then satisfied with the said draft and did not give delivery of the necklace and on the 3rd February 1917 the accused in company with the said Tejoomull Dingomull had an interview with Mr. Brent the Manager of the International Bank, Bombay. Mr. Brent suggested that the accused should wire to Messrs. E. Curtice & Company to pay £5000 to the International Bank's office in London and Mrs. Brent wired to that office to receive the money.

11. The accused subsequently informed your complainant's firm that he had cabled accordingly to Messrs. E. Curtice & Company and that the amount of the draft would be duly paid to the International Bank by Messrs. E. Curtice and Company on receipt of the said telegram.

12. On the 7th February 1917 the said Mrs. Muntz on behalf of the accused called at your complainant's shop and took delivery of the said necklace.

13. Your complainant's firm had certain urgent payments to make of a considerable amount and therefore on the 10th February 1917 they asked the accused whether he would pay them Rs.

15,000 on account of the said draft, of which the proceeds had not then been received by them. The accused gave them a cheque for Rs. 15,000 on Thomas Cook and Son and it was arranged that your complainant's firm should repay that amount to the accused when the proceeds of the draft had been received in Bombay. The said cheque for Rs. 15,000 was duly honoured.

14. On the 22nd February 1917 your complainant's firm received a letter from the International Bank stating that their London Office had received no moneys from Messrs. E. Curtice and Company.

15. On the 23rd February 1917 the accused was interviewed and stated that he had instructed his London Agents to sell some shares but that they had advised against his doing so and had suggested a loan instead.

16. On the 25th February 1917 the accused was again interviewed by Sahijram Khiamul Lokoomull Sahijram and Tejoomull Dingamull and he stated he could sell his shares but that it would take a month to do so and he proposed therefore to give them a draft for £4000 on the firm of William Collins Sons and Company of which he stated he was a partner. The accused represented that his brother was another partner and would not refuse a draft from him.

17. On this representation your complainant's firm returned to the accused the draft on Messrs. E. Curtice and Company and accepted a draft drawn by the accused on William Collins Sons and Company of London and Glasgow. Your complainant's firm agreed not to present the draft until the 15th April 1917.

100 18. On the 27th February 1917 the accused with Mrs. Olsan and Mrs. Muntz left India for Colombo and thence travelled Eastward to America.

19. On the 21st April 1917 your complainant was advised that the draft for £4000 had been refused with the answer "No authority to draw." The said draft has been presented twice but has not been paid. Your complainant says that the accused well knew that it would not be paid.

20. Your complainant submits that the accused deceived your complainant and thereby dishonestly induced your complainant's firm to deliver the said necklace to Mrs. Muntz on his behalf upon a promise to pay for the same, which promise the accused had no intention of performing, that the accused gave your complainant a worthless draft for £5000 on Messrs. E. Curtice and Company well knowing the same to be worthless and that the accused gave the draft for £4000 on William Collins Sons and Company well knowing that the same was worthless.

Your Complainant therefore submits that the accused has committed the offence of cheating under S. 420 of the Indian Penal Code and prays that he may be charged and dealt with according to law. (Sd.) Udharam Partabrai. Mr. Baker, For Complainant.

Taken on solemn affirmation before me— (Sd.) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. 22-9-17.

In order that complainant may produce witnesses to enable me o act under the Fugitive Offenders' Act adjourned to 25-9-17. Sd.) Chunilal H. Setalved, Ag. Chief Presidency Magistrate.

Further adjou-ned for orders to 11-10-17. (Initialled) C. H. S. 5-9-17.

True copy. (Signed) Chunilal H. Setalved, Ag. Chief Presi-ency Magistrate, Bombay. [Seal.]

01 547-2,000,000-6-14—(12)—st. Civ. A. 27 e.

EXHIBIT No. —.

Deposition of Witness No. I for the Prosecution.

I do hereby on solemn affirmation state that—

My name is Udharam	Father's name Partabrai
Religion Hindoo	Caste Katri
Age about 21	Occupation Manager of Pohoomull Brothers
Residence Carnac Bridge	District——

Examination-in-chief:

The accused Lieutenant Colonel Collins has absconded out of British India and according to my information he is at present in Quebec Canada. I am Manager of Pohoomull Brothers doing busi-ness in Bombay and other places as jewellers and in silk and curios. I am the Manager of the Apollo Bunder shop. I know the accused Lieutenant Colonel Charles G. Collins. I first saw him on or about 20th December 1916 when he visited our shop at Apollo Bunder. The accused talked a good deal about himself. He said that he was attached to the Howe Battalion and that he was a Royal Naval Officer. He said he was on six months' leave. There was one Mrs. Olsen with him and Mrs. L. C. Muntz. The accused told me that Mrs. Muntz was his fiancee. The accused told me that they were all staying at the Taj Mahal Hotel which is a first class Hotel in Bombay. Accused made some purchases worth about 200 or 300 Rs. and paid for them. On or about 23rd December 1916 the ac-cused accompanied by Mrs. Muntz came to me at our Apollo Bunder shop and bought one silk rug for Rs. 650 and the *and the* accused gave a cheque on Messrs. Thomas Cook and Sons and the cheque was cashed. About this time the accused and the two ladies changed their residence from Taj Mahal Hotel to Harkness Road, Malabar Hill a locality where rich persons reside. A few days afterwards the accused and Mrs. Muntz called at our Apollo Bunder shop and they said that they wanted to see some pearl necklaces of the value of about Rs. 75000 each. I did not show any necklace that day but I made an appointment to take the necklaces to their residence. A few days afterward Mr. Tajamull our general manager and Mr. Lokhumull

one of the proprietors went to the accused's bungalow with two or three necklaces. Then they returned and gave me back the necklaces. On 30th January last the accused Colonel Collins and Mr. Muntz came in our shop and bought a pearl ring for 1000 Rs. and the accused gave a cheque which was cashed. On this occasion Mrs. Muntz said in the presence of the accused that the particular necklace which they saw at their residence may be shown to them again and I showed it. The value of that necklace was 72250 Rs.

102 Mrs. Muntz said that she wanted 13 pearls to be altered from that necklace and that she would not mind if it cost a few hundred pounds more. We got 6 or 7 pearls altered and the value of the necklace became 75000 Rs. The necklace was ready on 2nd February 1917. I or Mr. Tejumull telephoned to the accused saying that the pearl necklace was ready and he replied saying that he would call at the shop at 1 P. M. Subsequently that day I got a message from him that the pearl necklace should be taken over to his place at Malabar Hill. Mr. Lokomull Lokhumull and Mr. Tejoomull took the necklace to the residence of the accused. I did not go. Lokhumull and Tejumull returned with the necklace and they brought a draft for 5000£. drawn by the accused on Messrs. E. Curtice of 8 Clarges Street, London W. I produce the draft original as well as duplicate put in and marked Ex. A. One of the senior partner- Mr. Sahijram one of the proprietors of our firm was not satisfied with the draft so he went to the manager of the International Banking Co. with the draft. On his return and under his advice I telephoned to the accused asking him to see us the next day. The following day the accused came to our shop and he went with Tejumull to see the manager of the International Bank. From that Bank Tejumull telephoned to me to take the draft Ex. A to that Bank and I did so. I went inside to the Manager of the Bank where Tejumull and the accused were also seated. The Manager Mr. Bent suggested that the accused should wire to his agents E. Curtice & Co. to pay 5000£ to the Manager of the International Bank in London. The accused said that that course would be very satisfactory to him and that he was going to wire to his agent to that effect. The accused also assured us that the amount will be paid immediately by E. Curtice & Co. to the Manager International Bank London on the receipt of his telegram. Sometime afterwards accused said he had sent the telegram. After two or three days the accused accompanied by Mrs. Olsan and Mrs. Muntz came to our shop in the evening. Mrs. Olsan said that she also wanted to buy a pearl necklace worth about Rs. 75000 and we showed them one necklace worth about 6000 Rs. They did not buy it. On or about 7th February 1917 the accused came to our shop with Mrs. Muntz and asked for the delivery of the first necklace. Lokumull, Trjumull and myself consulted whether the necklace should be given as no money was paid. Accused assured us that he had sent a telegram as arranged and that the amount will be paid by E. Curtice & Co. to the Manager International Bank, London. Trusting to these assurances we gave the accused the necklace. Then on or about 10th February we had some drafts to meet. Lokumull and Tejumull went to the accused's

house and Lokumull gave me a cheque for 15000 Rs. drawn by the accused on Messrs. Thomas Cook & Sons. Lokumull told me that we would have to return 15000 Rs. to accused on the Manager of the International Bank receiving 5000£ on our behalf. That cheque for Rs. 15000 was cashed some days late. On 22nd February we got a letter from the International Banking Corporation saying that nothing was received from E. Curtice & Co. I produce that letter put in and marked Ex. B. Upon that Lockumull and Teju-
103 mull went to the accused's bungalow and they saw and gave me certain information. On 26th February last they gave me a draft for 4000£ drawn by the accused on Messrs. William Collin- and Sons Glasgow. On 27th February the accused and the two ladies left Bombay by P. & O. Co.'s steamer for Colombo. Accused told me that they would go from here to Colombo then to Shanghai and then to London. The accused told me that the draft for 4000£ should be presented on 15th April and we sent the draft for collection to the International Bank Bombay. On 20th April we received a letter from the International Banking Corporation stating that the draft in question was refused payment with the answer "no authority to draw." I produce that letter put in and marked Ex. C. We then telegraphed to our agent at Yokohoma for arranging with the accused for payment. We received this telegram dated 21st April from the accused from Yokohoma saying to represent the draft 60 days' sight delay unavoidable. The telegram put in and marked Ex. D. Then we caused inquiries to be made and found that the accused was touching Vancouver so we sent a telegram to him there but no reply was received. The International Banking Corporation thrice presented the draft for payment but it was not honoured. On 27th June we received this letter from the Bank put in and marked Ex. E saying that "Collins noted nonpayment." Then we instructed our Solicitors Messrs. Little & Co. to communicate with their London correspondents and I produce the reply which my Solicitors got from Rawle Johnstone & Co. Solicitors put in and marked Ex. F. We have also received information from reliable sources to the effect that Messrs. E. Curtice & Co. are not Bankers but only boarding house keepers and the accused is an undischarged bankrupt. I have no reason to disbelieve this information. The draft of 4000£ in question is in London with the International Banking Corporation at present. I say the accused has cheated us. If he had not given us the assurances I have spoken of we would not have given the necklace to him. The accused is tall, clean shaven about 40 years of age. He is fair. I will be able to identify him and will be able to identify the necklace in question. I will also be able to identify most of the pearls even if the necklace is broken up. It was a single row necklace. The transaction is put down in our book. (Sd.) Udharam Partabrai.

Taken on solemn affirmation this 11th day of October 1917, Before me— (Sd.) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

104 547-2,000,000-6-14—(12)—st. Civ. A. 27e.

EXHIBIT No. —.

Deposition of Witness No. II for the Prosecution.

I do hereby on solemn affirmation state that—

My name is Lokumull.	Father's name Sahijram.
Religion Hindoo.	Caste Khatri.
Age about 27.	Occupation Merchant.
Residence Carnac Bunder.	District ——.

Examination-in-chief:

I am one of the partners of Messrs. Pohoomull Brothers doing business in jewellery, silk and curios at Bombay and various other places. One of our shops is at Apollo Bunder Fort in Bombay. The accused Lieutenant Colonel Collins absconded from British India. According to our information he is at Quebec Canada. I first met him about the middle of January last. I accompanied by Tejumull our general Manager and my father Sehejram went to the accused at his bungalow at Malabar Hill with some pearl necklaces. There the accused and one Mrs. Muntz examined the necklaces and selected one necklace worth about 72,258 Rs. But they did not buy it at the time though they said that they liked it the best. On 30th January last Mrs. Muntz and the accused came to our Apollo Bunder shop and they purchased one pearl ring worth 1,000 Rs. and paid for it by a cheque which was cashed. They looked at the same necklace. Mrs. Muntz said that she wanted to have 13 pearls changed from that necklace. Accused told me that Mrs. Muntz was his fiancee. We altered 7 pearls and it was not possible to alter the 13 pearls and the price increased by 3,000 Rs. The necklace was ready on 2nd February. I and Tejumull took that necklace and went to the accused's bungalow at Malabar Hill and there we saw the accused and Mrs. Muntz. Mrs. Muntz said in the presence of the accused that she was going to marry him, (the accused) and the necklace was going to be a Wedding Present to her from him. The accused examined the necklace and said he purchased it. The accused drew the original and duplicate drafts Ex. A on E. Curtice & Co. but we were not satisfied with the draft and we wanted to consult with my father so we brought back the drafts and the necklace. The last witness Udharam knew all this. My father was not satisfied with the drafts so we went and consulted our Bank i. e. the Manager of the International Banking Co. Ltd., and he advised use to get the money by telegram and we agreed. The next day Tejumull telephoned to the accused to come and see our Bank Manager. That day the accused showed me a telegram which he was sending to St. Louis saying cable 2,500 dollars more available if needed. Accused told Tejumull in my presence to send telegram to the telegraph office and it was done. Reading that telegram

accused impressed us with the fact that accused was a rich
105 man and we can safely trust him. I was not present at the interview with the Manager of the International Banking Corporation. On 5th February last accused came to our shop with Mrs. Muntz and Mrs. Olsan and Mrs. Olsan said she wanted to purchase a necklace worth about 5,000£ and we showed her necklace worth about 60,000 Rs. but she did not purchase it. On 7th February accused accompanied by Mrs. Muntz came to our shop and they wanted that necklace worth 75,000 Rs. which they had selected. Accused assured us that 5,000£ will be paid by Messrs. E. Curtice & Co. on his telegram to our Bankers viz. the International Banking Co. in London so we consulted among us and believed the accused and we gave the accused the necklace worth 75,000 Rs. On 22nd February we received information from our Banker that the money was not paid by E. Curtice & Co. Ex. B. is the letter we received from our Bankers. On 23rd February last I and Tejumull went to the accused at his bungalow an we told him what our Banker had written. Then the accused told us that he had wired his agents E. Curtice & Co. to sell some of his shares and that he had received a reply saying that the shares do not fetch the proper value and so it was advisable to get a loan. Accused also said that he had wired to his agents to give the terms on which he can get a loan but that no reply had been received. On 25th February last myself and Tejumull went to the accused's bungalow and he said he was one of the partners in William Collins Sons & Co. Glasgow London and that he owns oil fields in Mexico. Accused said that Mrs. Muntz was a lady of means. Accused also said that he had some shares in Mexico mines and he said it would be a heavy loss to him if he sold his shares. Accused said that if he gave a cheque for 4,000£ on the firm of William Collins Sons & Co. at Glasgow on which he was a partner the firm will not refuse it. Accused said that he was going to get 90,000£ as profit on the sale of his mines but he wanted a 120.000£ as profit. On 26th February accused gave me a draft for 4,000£ on William Collins Sons & Co. It was a sight draft but he told us not to present the draft till 15th April and we agreed. We gave the drafts for collection to the International Banking Corporation and it has been dishonoured. Ex. C is the letter from our Bankers. The accused is rather tall, thin in face, clean shaven, about 40 years of age. Our Solicitor i. e. Mr. Baker of Messrs. Little & Co. held a consultation with Mr. Strangman the Advocate General and I produced the certificate that he has given. This certificate put in and marked Ex. G.

Taken on solemn affirmation this 11th day of October 1917. (Sd.) Chunilal H. Setalvad.

Before me— (Sd.) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

106 547-2,00-,000-6-14(12)—st. Civ. A. 27e.

EXHIBIT No. —.

Deposition of Witness No. III for the Prosecution.

I do hereby on solemn affirmation state that—

My name is John Dunstan.	Sherstan Baker.
Religion Christian.	Caste.
Age about 35.	Occupation Solicitor.
Residence Wallace Street.	District Bombay.

Examination-in-chief:

I am a partner of Messrs. Little and Company Solicitors. We are acting for the complainant. I have gone into the case. I have also caused inquiries to be made about the accused. We received this reply from our correspondent Rawle Johnson and Co. It is Ex. F. I am of opinion that on the depositions and the materials there is a prima facie case of cheating punishable with more than one year rigorous imprisonment, it is punishable with seven years' rigorous imprisonment under section 420 of the Indian Penal Code which is in force in British India. I have got the certificate Ex. G. from the Advocate General who has advised this prosecution. (Sd.) J. D. Sherston Baker.

Taken on oath this 11th day of October, 1917, before me (Sd.) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

In the Esplanade Police Court of Bombay.

Before the Chief Presidency Magistrate.

Case No. 533/W. of 1917.

UDHARAM PATARBAGH, Complainant,

vs.

Lieutenant Colonel CHARLES G. COLLINS, Accused.

The application of Udharam Patabargh the above-named complainant, sheweth,

1. That on the 22nd day of September 1917 your complainant filed an information against the above-named accused in this
107 Honorable Court charging the accused with cheating in respect of a sum of Rs. 60,000 part of the purchase price of a pearl necklace.

2. That at the date of the filing of the information the accused was believed to be at Quebec in Canada.

3. That the learned Magistrate accordingly directed that the procedure laid down by the Fugutive Offenders Act should be complied with and after the same had been complied with the learned Magistrate on the 11th day of October, 1917, directed the issue of a warrant of arrest against the accused.

4. That your complainant has, since the issue of the said warrant, been informed by the Under Secretary to Government Political Department that the accused on or about the 1st October, 1917, left the said City of Quebec and proceeded to New York in the United States of America and that he is now resident at the Ritz Carlton Hotel in that City.

Your complainant therefore prays that further evidence necessary to be recorded where an accused is not within His Majesty the King Emperor's dominions may be recorded and that a fresh warrant may be issued and that such fresh warrant should comply with the provisions of the Extradition Acts and the Extradition treaty with the United States of America.

Dated this 19th day of October, 1917. (Sd.) Udharam Partabrai. Application drawn by Little & Co., Complainant's Attorneys.

In pursuance of this application Inspector Fuller is examined today. A warrant for the arrest of the accused on the materials already before me is issued as prayed for. (Sd.) Chunilal H. Satalvad. 19-10-17.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

108 547-2,00,-000-6-14—(12)—st. Civ. A. 27*e*.

EXHIBIT No. —.

Deposition of Witness No. IV for the Prosecution.

I do hereby on solemn ajrmation state that—

My name is Arthur
Religion Christian
Age about 41
Residence Phalton Road

Father's name Fuller
Caste
Occupation Inspector of Police, Bombay.
District ——

Examination-in-chief:

I am an Inspector in the Bombay Police. I am deputed by the Government of Bombay through the Commissioner of Police to act as an escort of the accused Collins if surrendered. I was handed a warrant by this Court under the Fugitive Offenders Act, Telegrams were sent by His Excellency the Governor of Bombay for the arrest of the accused Collins to the authorities at Quebec where he was

said to have absconded but subsequently information has been received that the accused Collins has gone to New York in the United States. I produce the letter from the Under Secretary to Government Political Department addressed to the Commissioner of Police mentioning these facts. This letter put in and marked Ex. H. I have also gather- information about the appearance and marks for the identification of the accused Collins. He is tall, *we* built about 6 feet high athletic florid complexion, walks with Military gait squaring shoulders. He was clean shaven when in Bombay. Hair scanty dresses well but flash, weighs between 13 and 14 stones. (Sd.) A. Fuller, Inspector.

Taken on oath this 19th day of October, 1917, before me (Sd.) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

109 **List of Exhibits in Case No. 533/W. of 1917.**

Exhibit A. Original and Duplicate drafts for £5,000 dated 2nd February 1917 from Lt. Col. Charles G. Collins to Messrs. E. Curtice & Co., 8 Clarges Street, London, W. England.

Exhibit B. Letter from the International Banking Corporation Bombay dated 22nd February 1917 to Messrs. Pohoomall Brothers, Bombay.

Exhibit C. Letter from the International Banking Corporation dated 20th April 1917 to Messrs. Pohoomall Brothers, Bombay.

Exhibit D. Telegram from accused Colonel Collin to Pohoomall, Bombay.

Exhibit E. Latter from the International Banking Corporation dated 27th June 1917 to Messrs. Pohoomall Brothers, Bombay.

Exhibit F. Letter from Rawle Johnstone & Co. dated 14th August 1917 to Messrs. Little & Co.

Exhibit G. Certificate from Advocate General.

Exhibit H. Letter No. 8012 dated 17th October 1917 from the Under Secretary to Government, Political Department, Bombay, to the Commissioner of Police, Bombay.

(Sd.) Balaram Gajanan, Judicial Clerk, Chief Presidency Magistrate's Court, Bombay.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

Ex. A.

No. B. 42876.

Duplicate.

£5000-0-0. Bombay, February 2nd, 1917.

Sixty days after date (original unpaid) pay to Pohoomull Bros. or Order the sum of five thousand pounds sterling and charge the same to my account. (Sd.) Charles G. Collins, Lieut. Colonel. To Messrs. E. Curtice & Co., 8 Clarges Street, London, W., England.

110 Ex. A.

No. B. 42876.

Original.

£5000-0-0. Bombay, February 2nd, 1917.

Sixty days after date pay to Pohoomull Brothers or Order the sum of five thousand pounds sterling and charge the same to my account. (Sd.) Charles G. Collins, Lieut. Colonel. To Messrs. E. Curtice & Co., 8 Clarges Street, London, W., England.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

Ex. B.

International Banking Corporation.

Bombay, 22nd February, 1917.

Messrs. Pohoomull Brothers, Bombay.

Dear Sirs: In response to our telegram of the 19th Instant to our London office enquiring if they had received any sum from Messrs. E. Curtice & Co. we have today received a telegram stating that nothing has been received.

Please note that we have debited your account with Rs. 20 cost of telegram. Kindly confirm our entry. Yours faithfully, (Sd.) ——, Manager.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

Ex. C.

International Banking Corporation.

Bombay, 20th April, 1918.

Messrs. Pohoomull Bros., Bombay:

Yours. C. on Wm. Collins Sons & Co. Ltd. Glasgow p. £4000/– Our No. 17/215.

We have received telegraphic advice from our London Office that the above bill is refused payment with the answer "no authority to draw."

111 Kindly give us your further instructions and hand us Rs. 161-4- being our ¼% commission and cost of telegram as under:

¼% commission on £4,000/- = £10/- @ ¼ ..... Rs. 150-0-0
C/o telegram from London re: do ..... " 11-4-0

Rs. 161-4-0

Any further charges yet to be paid will be advised to you on receipt of advice from London. Yours faithfully. (Sd.) —— ——, Manager. (Seal.)

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay.

Ex. D.

C3.

Posts Telegraphs,
Bombay 2nd April 1917.
G. T. O.

= D. F. L. F. 278 Yokohama 24 M. S. P. H. K. 11.
L. C. D. Pohoomull Bombay.
Represent draft sixty days' delay unavoidable. Colonel Collin.

True Copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. (Seal.)

Ex. E.

International Banking Corporation.

Bombay, 27th June, 1917.

Messrs. Pohoomull Bros., Bombay.

DEAR SIRS: We have received the following telegram from our London Office today:

'Referring to your telegram of 21st collection No. 215 Collins noted non-payment."

For cost of this message your account is debited Rs. 7/8/—(Rupees seven and annas eight only) which please note and confirm. Yours faithfully, (Sd.) —— ——, Manager.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. (Seal.)
3-672.

112 Ex. F.

1 Befford Row, London, W. C. 1,
August 14th, 1917.

Re Collins.

DEAR SIRS: With reference to your letter of the 12th July we have communicated with our Glasgow correspondents who are important people and who will be able to give us more information about the subject of your enquiry than anyone else.

The following is an extract from a letter we have received from our Glasgow correspondents, whom we asked to make enquiries.

"We are in receipt of your letter of the 10th Curt.

"We happen to know a good deal about Charles G. Collins. We "are the Solicitors of his elder brother, Mr. W. A. Collins, and are "on intimate terms with another brother, Mr. Godfrey P. Collins "M. P. for Greenock.

"About Charles we have only the worst report to give. As a young "man he had to resign his Commission in the Army. He was for "many years in America and was a few years ago involved there in "a criminal prosecution in regard to money matters.

"He got a chance in the present war and did well, we might say "brilliantly to begin with, but had to leave the Army (we do not "know the particulars), when holding the rank of Lieutenant "Colonel.

"He married an American, who had means of her own in strong "opposition to her father but they separated some time ago.

"We have heard that he was associated with a married woman "presumably Mrs. Montz, but as his wife is not, we understand, to "proceed with a divorce, Mrs. Montz's relation with him must be "somewhat unusual.

"We know nothing as to any interest he may have in oil fields in "Mexico, but we do not believe his statement as to this to be true.

"We do know, however, that he has no interest in Messrs. William "Collins & Sons & Co. Ltd., and that neither of his brothers will do "anything for him.

"We are sorry that our report should be so unsatisfactory, but "leave it to you to decide as to how much of it you should communi-"cate with your Bombay correspondents."

We are communicating with the War office as to the present whereabouts of Colonel Collins but we are afraid that we shall get nothing but the usual answer in these cases, which almost invariably — that the address will not be given, but that any letter we like

to send to Colonel Collins C/o the War Office, will be forwarded. Yours truly, (Sd.) Rawle Johnstone & Co. Messrs. Little & Co.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. (Seal.)

113 Ex. G.

In the Esplanade Police Court of Bombay.

UDHARAM PATARBAGH, Complainant,

vs.

Lt. Col. C. G. COLLINS, Accused.

I, Thomas Joseph Strangman Advocate General of Bombay India do hereby certify:

1. That the offence with which the accused is charged is that of cheating and dishonestly inducing delivery of property.
2. That the offence of cheating and dishonestly inducing delivery of property is punishable under Section 420 of the Indian Penal Code with either simple or rigorous imprisonment (the latter being imprisonment with hard labour) which may extend to seven years.

Dated this 25th day of September, 1917. (Sd.) T. J. Strangman, Advocate General of Bombay.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

Ex. H.

No. 8012.

Political Department,
Bombay Castle, 17th October, 1917.

From A. F. Kindersley, Esquire, Under Secretary to Government, Bombay.

To the Commissioner of Police, Bombay.

SIR: I am directed, with reference to the correspondence ending with your letter No. 10231/31, dated the 8th October, 1917, to state that a reply has been received by His Excellency the Governor from the Lieutenant Governor of Quebec, dated the 13th October, as follows:

"Your telegrams of 6th and 11th August (sic). Reply that same person left with New York October 1st stay at Hotel Ritz Carlton, and is not in jurisdiction of Province of Quebec."

2. I am accordingly to say that, unless you see any reason to the contrary, you should apply to the Chief Presidency Magistrate for a warrant of arrest against Collins, stating the offence in terms of the

treaty between the United States and Great Britain that is,
114 as an offence of "obtaining property by false pretences."
The necessity for this will be seen on a reference to pages 66 and 201 (3rd treaty with United States) of the Honorable Mr. Muddimen's "Law of Extradition from and to British India." I am also to invite attention to Article X on page- 198-9 of the same.

3. The warrant should be addressed to the officer who is to be sent to act as escort to Collins. It should be submitted to Government with record of the evidence, or copies thereof certified by the recording Magistrate. In the case of depositions or other documents extending to more than one sheet of paper, any suspicion of the possibility of the substitution of a sheet should be forestalled by appropriate arrangements.

4. I am also to request that the description of the offender already asked for may be submitted to Government with the papers.

I have the honor to be, sir, Your most obedient servant, (Sd.) A. F. Kindersly, Under Secretary to Government.

True copy. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

Chief Presidency Magistrate's Court.

I, Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay, do hereby certify that a prima facie case of an offence at Bombay of cheating under section 420 of the Indian Penal Code in respect of or obtaining by false pretences a pearl necklace valued at Rs. 75,000 has been established against the accused Lt. Colonel Charles G. Collins and that the alleged act constitutes under the law in force in the Bombay Presidency an offence punishable under the Indian Penal Code with imprisonment of either description (rigorous or simple) for seven years and a fine.

Given under my hand and seal of the Court this 19th day of October, 1917. (Signed) Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay. [Seal.]

Motion of Charles Glen Collins to Dismiss.

[Filed Oct. 26, 1918.]

U. S. District Court, Eastern District of Louisiana, New Orleans.

No. 15927.

In re Extradition Proceedings of CHARLES GLEN COLLINS.

Now comes Charles G. Collins whose extradition is sought in these proceedings and moves the Court to dismiss the affidavit
115 herein and to discharge him from custody without day because this Court is without jurisdiction to try appearer or to

hear and pass upon the question raised by the affidavits or the rights of this appearer on the grounds and for the reasons following, to wit:

1st. Because that heretofore, to wit: on or about the 5th day of November, 1917, affidavit was made by C. Clive Bayley His Britan-ic Majesty's Consul General at the Port of New York against appearer herein Charles G. Collins before Hon. Samuel M. Hitchcock, United States Commissioner for the Southern District of New York for the alleged offense, matters and things referred to and declared upon in the affidavit of Gerard M. Lolly, British Vice Consul at the City of New Orleans which is basis of these proceedings which said affidavit by the said C. Clive Bayley, His Britan-ic Majesty's Consul General was for the purpose of having this appearer extradited from this country where he then was and now is to British India which is the purpose of the affidavit in these proceedings by the said Gerard M. Lolly, British Vice Consul at the City of New Orleans; that upon the said affidavit of C. Clive Bayley, His Britan-ic Majesty's Consul General at New York, a warrant of arrest was issued by the said Samuel M. Hitchcock, United States Commissioner for the Southern District of New York and this appearer was thereupon arrested at the City of New Orleans by the United States Marshal for the Eastern District of Louisiana acting under the authority of the said warrant issued by the said Samuel M. Hitchcock, United States Commissioner for the Southern District of New York and this appearer was duly incarcerated in the Parish Prison located in the City of New Orleans and also in the House of Detention likewise in the City of New Orleans; that in due time the said affidavit by the said C. Clive Bayley, his Britan-ic Majesty's Consul General at the Port of New York hereinabove referred to was dismissed and appearer was discharged from custody thereunder and the said affidavit and the warrant issued upon the faith thereof were fully and duly satisfied and this appearer cannot now or again be held to answer the said charges nor for the offenses, matters or things alleged in said affidavits.

2nd. Because the affidavit of Gerard M. Lolly British Vice Consul is not such as is required by law does not comply with the law and did not justify the issuance of the warrant of arrest and does not justify the holding of this appearer thereunder for the reasons.

(*a*) The said affidavit does not charge this appearer with having committed any crime and particularly does not charge him with having committed a crime for which, under the treaties between this Country and Great Britain, this appearer may be extradited.

(*b*) Because even if the said affidavit does charge such a crime herein immediately above referred to, the same is not made in the manner and form required by law and by the said treaties particularly because the said Lol-y, Affiant therein, does not state the source of his information upon which his alleged affidavit is made, nor does he annex thereto any paper, document, copy or evidence which justifies the affidavit, nor does he give the ground of his belief of the truth of the matters and things stated in the said affidavit.

116 Wherefore, this appearer objects to and protests against this Honorable Court hearing any evidence, either orally or documentary, upon the affidavit hereinabove referred to and prays

he Court to dismiss the said affidavit and to discharge this appearer ithout day. (Signed) Charles Glen Collins. (Signed) J. Zach pearing, Atty.

Affidavit.

TATE OF LOUISIANA,
Parish of Orleans:

Before me the undersigned authority personally came and appeared Mr. Charles G. Collins who being duly sworn deposes and ays: That all of the allegations in the above and foregoing petition re true and correct. (Signed) Charles Glen Collins.

Sworn to and subscribed before me this 22nd day of October, 1918 t the City of New Orleans, State of Louisiana. (Signed) J. Zach pearing, Not. Pub. [Seal.]

Affidavits of Complainant, Exhibits, Certificates, and Deposition- of Witnesses.

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Gerard M. Loly, who being by me first duly sworn, deposed and said that he is British Vice Consul at the City of New Orleans; that Charles Glen Collins, having in British India committed the crime of obtaining goods by false pretenses, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 19th, 1917, fraudulently, falsely and feloniously pretended to the commercial firm of Ganeshi, Lall & Sons, carrying on business at Agra, Simla and Calcutta, India, that he, the said Collins, was a wealthy man, a partner in the firm of William Collins Sons & Company, of Glasgow and London; that he was a Colonel in the Howe *Batallion* of the Royal Naval Division; and was then on six months' leave; that he, the said Collins, then and there had the right to draw a draft for two thousand pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London; that the said E. Curtice & Company were bankers; that he, the said Collins, as a man of wealth, was amply entitled to an additional credit of two thousand pounds. Whereas, in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary was a bankrupt; that he was not and never had been a partner in
117 the firm of William Collins Sons & Company; that he was not a Colonel in the Howe *Batallion* of the Royal Naval Division, and was not then and there on six months' leave; that he, the said Collins, had no right to draw a draft for two thousand pounds, or for any amount, on said Messrs. E. Curtice & Company; that the said E. Curtice & Company were not bankers; that the said Collins was not entitled to an additional credit of Two thousand pounds, or to any credit whatsoever; that by means of said false, fraudulent and

felonious pretenses, said Collins then and there obtained from said commercial firm of Ganeshi, Lall & Sons, one emerald and diamond necklace; five emeralds; one star ruby and three sapphires, of the price and value of four thousand five hundred pounds, of the property and goods of said Ganeshi Lall & Sons; which said pretenses were to the knowledge of said Collins, at the time of making same, false and fraudulent; and affiant further says that said Collins is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further says that Thomas F. Carlisle, the British Consul General at this Port, is confined to his home by illness, and therefore cannot make this affidavit, and that affiant makes the same upon instructions received from the said Thomas F. Carlisle.
(Signed) Gerard M. Loly.

Sworn to and subscribed before me this 16 day of October, 1918.
(Signed) Rufus E. Foster, Judge.

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans,
City of New Orleans:

Before me, the undersigned authority, personally came and appeared Tom F. Carlisle, who being by me first duly sworn, deposed and said that he is British Consul General at the City of New Orleans; that he is informed and being so informed, verily believes that Charles Glen Collins having committed the crime of obtaining property by false pretences, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 19th, 1917, fraudulently, falsely and feloniously pretended to the commercial firm of Ganeshi, Lall & Sons, carrying on business at Agra, Simla and Calcutta, India, that he, the said Collins was a wealthy man, a partner in the firm of William Collins Sons & Company, of Glasgow & London; that he was a Colonel in the Howe *Batallion* of the Royal Naval Division; and was then on six months' leave; that he, the said Collins, then and there had a right to draw a draft for two thousand pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London, and consequently that said draft would be paid; that the said E. Curtice & Comapny were bankers; that he, the said Collins, as a man of wealth, was amply
118 entitled to an additional credit of two thousand pounds; whereas in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary was a bankrupt; that he was not and never had been a partner in the firm of William Collins Sons & Company; that he was not a Colonel in the Howe *Batallion* of the Royal Naval Division and was not then and there on six months' leave; that he, the said Collins, had no right to draw a draft for two thousand pounds or for any amount on said Messrs. E. Curtice

Company, and said Collins then and there well knew said draft uld not be paid; that the said E. Curtice & Company were not kers; that the said Collins was not entitled to an additional dit for Two thousand pounds, or to any credit whatsoever; that means of said false, fraudulent and felonious pretences, said Col- then and there obtained from said commercial firm of Ganeshi, l & Sons one emerald and diamond necklace; five emeralds; one ruby and three sapphires, of the price and value of four thou- d five hundred pounds, of the property and goods of said Ganeshi l & Sons; which said pretences were to the knowledge of said lins at the time of making same, false and fraudulent; and affiant ther says that the said Collins, is presently within the City of w Orleans, and within the jurisdiction of this Honorable Court, l that this affidavit is made in behalf of the British Government, the purpose of having returned to India for trial, the said Collins. And affiant further states that the source of his information and ief, upon which information and belief this affidavit is based, is follows:

The evidence taken on said charge in the Chief Presidency Magis- te's Court, at Bombay, India, duly certified according to the pro- ions of Section 5271 of the Revised Statutes of the United States; e evidence taken before Sir John Dickinson, Knight, Bow Street lice Court, London, and the evidence, taken before Alexander art Duff Thompson, at Glasgow, salaried Sheriff of the Sheriff- m of Lanarkshire, said pieces of evidence duly certified according the provisions of Section 5271 of the Revised Statutes of the ited States are duly annexed to an affidavit filed this day in use No. — of the docket of the United States District Court for e Eastern District of Louisiana at New Orleans; and a telegram m the British Consul General at New York to the British Consul neral at New Orleans, of date January 4th, 1918, a code transla- n whereof is hereto annexed as part hereof. (Signed) T. F. rlisle.

Sworn to and subscribed before me this 22 day of October, 1918. igned) Rufus E. Foster, Judge.

9 British Consulate General, New Orleans.

anslation of Telegram in Code from the British Consul Gen- eral at New York to the British Consul General at New Or- leans, Received on January 4th, 1918.

Following from Secretary to the Government of Bombay, Political partment, Begins. Your telegram of December 21st. Two other arges against Collins; during February last obtained under false tences jewellry valued £2000 from firm of Geneshild and Sons of lcutta and a pearl button valued £1700 from Mahomed Alli Zaimal i Raza of Bombay. Ends. Suggest that further affidavits be

made and provisional warrants applied for at New Orleans in respect of these further charges. Bayley.

I hereby certify that the above is a true and exact translation of the telegram received by me from the British Consul General at New York which is hereto annexed. (Signed) T. F. Carlisle, H. B. M. Consul General. New Orleans, January 7th, 1918.

Certificate.

I, James A. Smith, Consul-General for the United States in Calcutta, hereby certify that the annexed papers being (1) a warrant of arrest, and (2) copies of prima facie proceedings in the Court of the Chief Presidency Magistrate, Bombay, proposed to be used upon an application for the extradition from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences alleged to have been committed in Bombay, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of British India, as required by the Act of Congress of August 3rd, 1882. (Signed) Jas. A. Smith, Consul-General of the United States of America at Calcutta, India. [Seal.] Calcutta, April 8th, 1918.

Certificate.

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences, committed in British India, I hereby certify that, to the best of my knowledge and belief, the signatures "A. H. S. Aston" on the warrant of arrest, and on the information and depositions on which the warrant was granted, are the sig-atures of Arthur Henry Southcote Aston, a Magistrate in British India, having authority to issue and receive the same, and I further certify that such documents so signed by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Secretary to Government and sealed with his official seal, would be received in evidence for similar purposes in the Tribunals of British India. (Signed) A. H. Grant, Secretary to the Government of India in the Foreign and Political Department. [Seal.] Simla, the 2nd April, 1918.

Case No. 662/W. of 1917.

No. 662/W. of 1917.

To Arthur Fuller, Inspector of the Bombay City Police Force, Bombay:

Whereas one Lt. Col. Charles Glen Collins stands charged with the offence of obtaining property by false pretences under section 420 of the Indian Penal Code within the jurisdiction of my Court in respect of jewellery valued at £2000 the property of the firm of Ganeshi Lall and Sons, jewellers of Calcutta.

You are hereby directed to arrest the said Lt. Col. Charles Glen Collins and to produce him at the Chief Presidency Magistrate's Court at Bombay or before such Presidency Magistrate as may then be present.

Herein fail not.

Dated this 1st day of December 1917. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

In the Court of the Chief Presidency Magistrate, Bombay.

In re BRIJMOHAN LALA RAMKISHANDAS, of the firm of Ganeshi Lall & Sons, Complainant,

vs.

Lt. Col. CHARLES GLEN COLLINS, Accused.

Charge: Cheating, Sec. 420, I. P. Code.

I the undersigned being the Chief Presidency Magistrate, of Bombay hereby certify that the typed matter contained in the foregoing 29 pages of paper is a true copy of the Information of Brijmohanlal Lala Ramkishandas of the firm of Ganeshilali and Son, Bombay taken on solemn affirmation before me on the 1st day of 121 December 1917 and of the depositions of the said Brijmohanlal Lala Ramkishandas, Dattatria Ramchandra and Arthur Fuller in support thereof sworn and taken before me on the 1st day of December 1917 and of the list of Exhibits and of Exhibits thereto marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 and of my certificate.

Given under my hand and the Seal of the Court this First day of December 1917. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

In the Court of the Chief Presidency Magistrate, at Bombay.

The Information of Birjmohan Lala Ramkishandas of the firm of Ganeshi Lall & Sons Jewellers carrying on business at Agra, Simla and Calcutta against Lieut. Colonel Charles Glen Collins solemnly

declared before A. H. S. Aston Chief Presidency Magistrate Bombay this — day of December 1917, sheweth:

1. Your complainant's firm carry on the business of the Jewellers and curio dealers at Agra Simla and Calcutta.

2. Lieutenant Colonel Charles Glen Collins (hereinafter called the accused) is, as your complainant is informed and verily believes, now under arrest in New York in the United States of America on an extradition warrant issued by this Hon-ble Court on a complaint of cheating and being No. 533W/—1917 filed by Udharam Patarbugh of Pohoomul Brothers Jewellers of Apollo Bunder Bombay.

3. About the middle of February 1917 the accused with two ladies named Mrs. Olga Olsen and Mrs. Elsie Muntz were staying with Her Highness the Maharani Kapurthala and the accused purchased from your complainant's firm the following jewells:

1 Fine square cut emerald weighing about 20 rutees.
1 Uncut emerald and diamond necklace.
1 Fine cabushon emerald weighing about 7 rutees.
1 Fine cut sap-hire about 16 rutees.
1 Cabushion emerald about 16 rutees.
1 Fine cut sapphire 11 rutees.
1 Fine cabushon emerald about 4 rutees.
1 Cabushon Sapphire about 31 Rutees.
1 Old engraved emerald about 80 rutees.
1 Fine cabushon star ruby about 20 rutees.

4. The price of the said jewells was £4,500 equivalent to Rs. 67,500.

5. The purchase was completed on the 19th February 1917 when the accused gave your complainant a cheque for £500 on Messrs. Thomas Cook & Sons, Bombay and a promissory note for £2,000 payable sixty days after date and expressed to be payable at Messrs. E. Curtice & Co., 8 Clarges Street London. The accused also promised to give to your complainants through their Agents Messrs. Thomas Cook & Son Bombay a sixty days' draft *of* his agents in London the said Messrs. E. Curtice & Co. for a further sum of £2,000/—.

6. The accused represented that he was a wealthy man, a partner in the firm of William Collins Sons & Co. of Glasgow and
122 London and a Colonel in the Howe Battalion of the Royal Naval Division and then on six months' leave and he assured your complainant that the said cheque for £500, the said promissory note for £2,000/— and the said draft for £2,000/— would all be duly paid.

7. Your complainant's firm believed the assurance of the accused— and were induced thereby to deliver to him the above-mentioned jewells.

8. The said cheque for £500 was duly honored and the accused delivered to Messrs. Thomas Cook & Sons as your complainant's agents in Bombay the said draft for £2,000.

9. Hereto annexed and marked "A" are copies of the said promissory note and draft and of a letter dated the 20th February 1917 written by the accused confirming the sale.

10. The accused left India on or about the 27th February 1917 and the said promissory note and draft were duly presented at maturity but were dishonored by non-payment. On being represented on several occasions they have been similarly dishonoured.

11. Your complainant has caused enquiries to be made in London and has been informed that the accused was adjudicated a bankrupt in England on the 19th August 1904 and that a second petition in bankruptcy was filed against him in 1916 and that he did not appear for his public examination.

12. Your complainant has also been informed that the accused has no interest at all in William Collins Sons & Co. Limited and that the same is not a firm but a limited Company.

13. Your complainant has been further informed that the accused was not on 6 months' leave from the Army as alleged by him but that since May 1916 he has not held a commission in the Army.

14. Your complainant has been further informed that Messrs. E. Curtice & Co. of 8 Clarges Street London are not Bankers and agents but merely boarding house keepers and were not aware that any draft had been drawn upon them by the accused nor had they any funds belonging to the accused wherewith to pay such drafts.

15. Your complainant submits that the accused deceived your Complainant and thereby dishonestly induced your complainant's firm to deliver the said jewells to him upon a promise to pay for the same which promise the accused had no intention of performing, that the accused gave a worthless promise note for £2,000/— to your complainant well knowing the same to be worthless and that the accused gave a worthless draft for £2,000/—to your complainant well knowing the same to be worthless.

Your complainant therefore submits that the accused has committed the offence of cheating under Section 420 of the Indian Penal Code and prays that he may be charged and dealt with according to law. (Sd.) Birjmohan.

Solemnly declared before me. (Sd.) A. H. S. Aston, Chief Presidency Magistrate.

123 Brijmohan Lal:—One of the drafts was given in Bombay. The sale took place at Delhi. The draft for £2,000 sterling dated 22nd February was given in Bombay. Accused owed us £2,000 and it was in fulfillment of the promise that he gave us the £2,000. Accused told us that he had money at Messrs. Clarges and Company and that the money would be paid at once. He had all the goods at this time.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

"A."

Copy of Promissory Note Made at Delhi.

£2,000. Delhi, February 19th, 1917.

Sixty days after date I promise to pay to Messrs. Ganeshi Lall & Son or order the sum of Two Thousand Pounds sterling for value received. (Sd.) Charles G. Collins, Lt. Col.

Payable at Messrs. E. Curtice & Co., 8 Clarges Street, London, W.

Copy of Draft Drawn at Bombay.

No. B. 695,928.

£2,000. Bombay, 22nd February, 1917.

Sixty days after date pay Ganeshi Lall & Son or order the sum of Two thousand pounds sterling and charge my account. (Sd.) Charles G. Collins. To Messrs. E. Curtice & Co., 8 Clarges Street, London, W.

Copy of Letter Given by Col. Collins at Delhi.

The 20th February, 1917.

To Messrs. Ganeshi Lall & Son, Jewellers, of Agra, Delhi.

Dear Sirs: I have taken delivery of all the stones and Necklace which I have bought yesterday morning to the value of £2,500/—and paid a cheque for £500/—and given you a sixty days' draft on my Agents in London for £2,000/—

I have also received from you the large emerald I bought of you yesterday evening, weighing 19 Rutees about to the value of £2,000/—for which I am going to give you a sixty days' draft on my Agents in London, through your Agents Messrs. Thomas Cook & Son, Bombay, on Thursday the 22nd of this month. Yours faithfully (Sd.) Charles G. Collins, Lt. Col.

124

A true copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

547-2,00-,000-6-14—(12)—st. Civ. A. 27 e.

No. 662/W. of 1917.

EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Brijmohanlal	Farther's name Lalla Ramkisondas
Religion Hindoo	Caste Khatri
Age about 25	Occupation Jeweller
Residence Calcutta	District ——

Examination-in-chief:

I know the accused. I first met him in Agra in January 1917. With him was one Sir Edwin John of the John Mills of Agra and Commander Holmes, one Mrs. Trapman, one Mrs. Olsan who was represented as the Colonel's sister, one Mrs. Muntz who was represented as his wife. They came to my place. They first made a small purchase. They ultimately returned to Bombay. Accused gave me this card put in as Ex. No. 1. Accused asked me to come and see him at 8 Harkness Road. We showed him some things but we did not agree as to the price. Accused told me he was going to Baroda and Kapurthala and would come back to Delhi about 16th or 17th February 1917. On the 15th February I wrote a letter to accused. This is a copy Ex. No. 2. I received this reply Ex. No. 3. I went to the Cecil Hotel on Monday. My father was with me. I had a box of jewels with me. We saw accused on the 19th February in the Cecil Hotel Delhi. My father was there also accused, Mrs. Olsan, Mrs. Muntz and I. Accused selected some jewellery. This is a list of the ornaments he selected. It is correct Ex. 4. The price was agreed on as £2,500. Accused gave me a cheque on Messrs. Thos. Cook and Sons, Bombay for Rs. 7,500 leaving a balance of £2,000 to be paid by promissory note in the afternoon for we had no hundi papers then. Before I gave him credit accused told me he had some interest in the Canadian Railway and was a partner of Collins Sons and Company and had some shares in London too. Accused said he would wire to his Bankers from Bombay to pay the drafts on the due-date. In the afternoon we went to accused's
125 room with the stamped Hundi papers. Accused wrote them in duplicate. This is a copy of the Promissory Note Ex. 5. After he had finished he looked at the jewels again and decided to buy one large emerald of 19 rattis for £2,000. He did not not pay at the time because we had no Hundi papers. Accused said he would give a draft to our Agents Messrs. Thos. Cook and Sons in Bombay. He gave us this draft letter to be written to Thos. Cook and Sons Ex. 6. Before leaving Delhi on the morning of the 20th he gave this letter Ex. 7. He also gave us this card Ex. 8. He

subsequently gave Messrs. Thos. Cook and Sons draft of which this is a copy Ex. 9. The original is in London. We received this advice by letter it is the original letter Ex. 10. Accused sent us this telegram Ex. 11. We received this advice from Thos. Cook and Sons Ex. 12. We caused enquiries to be made in London. I produce a letter received from Harry Morser with a report enclosed Ex. 13. No money has been received by me either in respect of the draft or Promissory note. Accused is a tall gentleman not very fat nor thin clean shaven, dark grey hair. He has a peculiar way of laughing. He has a very uncommon way of laughing. He does not walk like a soldier but like a millionaire. He looks like a very good man and a very rich man. He has left India.

If I had known that accused was an undischarged bankrupt and that Curtice and Company are boarding house keepers I would not have given accused the jewellery. I would not have accepted the draft in Bombay. Either I would have asked for cash or strong security and failing that I would have reported him to the Police. We know William Collins Sons and Company to be a good firm. I believed accused was a partner that is what he assured. I believed all his representations. I have lost £4000/-.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

547-2,00-,000-6-14—(12)—st. Civ. A. 27 e.

EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Dattatraya	Father's name Ramchandra
Religion Hindoo	Caste Brahmin
Age about 31	Occupation Clerk in Thos. Cook and Sons
Residence Grant Road	District Bombay.

Examination-in-chief:

On the 23rd February 1917 we had draft from Col. Collins. It was dated the 22nd February 1917. This is a copy of the draft viz. Ex. 9. It was given to me on account of Ganeshi Lall. The 126 draft was dishonoured. It has not yet been paid. It is with our London Office.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

547-2,00-,000-6-14—(12)—st. Civ. A. 27 e.

EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Arthur	Father's name Fuller
Religion Christian	Caste European
Age about 41	Occupation Inspector of Police
Residence Phalton Road	District Bombay

Examination-in-chief:

I have ascertained the description of Col. Collins. He is about 6 feet high, has broad shoulders, florid complexion, walks with a Military gait, is cleanshave-, dresses in a flashy manner.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

List of Exhibits in Case No. 662/W. of 1917.

No. 1. Visiting Card.
No. 2. Letter to Col dated 15-2-17 written by the complainant.
No. 3. Reply to above letter dated 16-2-17.
No. 4. List of Ornaments dated 19-2-17.
No. 5. Copy of the Promissory Note dated 19-2-17.
No. 6. Draft of letter written by the Colonel.
No. 7. Letter dated 20-2-17.
No. 8. London Address of the Col. (On a visiting card).
No. 9. Copy of a draft dated 22-2-17.
No. 10. First advice dated 3rd May 1917.
No. 11. Telegram.
No. 12. Advice dated 25th June 1917.
No. 13. Letter with report dated 28th September 1917.
No. 14. Certificate from the Advocate General of Bombay.

(Sd.) P. David, Judicial Clerk, Chief Presidency Magistrate's Court, Bombay.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

127 No. 1.

Ganeshi Lall & Son,

The Emporium, 13 Drummond Road,
Simla, Agra.
8 Harkness Road.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

No. 2.

Ganeshi Lall and Son, Jewellers,

The Emporium,

No. 13 Drummond Road, Agra & Simla.

Delhi, the 15th February, 1917.

To Lieut. Col. Collins, Kapurthala.

DEAR SIR: We trust this letter will find you at Kapurthala.

Since we had the pleasure of attending on you at Bombay we have had done some good luck both in selling and in acquiring a few good things.

It is due to one of these latter dues that I am sending this letter with a special messenger. It is an extremely fine ruby of uncommon size nearly fifteen carat in weight and full of life and colour. In short it is the right thing. We wish to show this to you and shall feel obliged by your letting us know when and where we can attend on you with it along with the other things you had selected in Bombay and which unfortunately I could not stay to sell as I had an engagement previously arranged at Agra.

Further I may add that the big emerald you saw in Bombay with me weighs nearly 20 rattis and not 15 rattis as were thinking. Yours faithfully, (Sd.) Ganeshila Lall. P. S.—Kindly reply per bearer and oblige.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

128 No. 3.

Guests' House, Kapurthala.

Colonel Collins is much obliged for Mr. Ganeshi Lall's letter and will be glad to see him on Monday at the Cecil Hotel Delhi at Noon.

Mrs. Collins wants a good diamond about 8-10 carats.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

No. 4.

Messrs. Ganeshi Lall & Son,

No. 13 Drummond Road, Agra, & the Mall, Simla.

No. L. 36.

Agra, the 19th February, 1917.

Lt. Col. C. G. Collins, Dr.

To Ganeshi Lall and Sons, Manufacturing Jewellers, Embroiderers & Shawl Merchants, Agra and Simla.

Date.	Proceedings.	Amount.
February 19th.	One uncut emerald & diamond necklace	
	One engraved Emerald about 80 Rattis	
	One Cabushon emerald about 4¼ Rattis	
	One Cabushan emerald about 16 Rattis	
	One fine Cabushon Emerald about 17 Rattis	
	One Cabushan star Rubie about 20 Rattis	
	One large sapphire about 11 Rattis....	
	One fine small sapphire about 5¼ Rattis	
	One Sapphire	£2,500-0-0
	One large emeralds about 19 Rattis...	£2,000-0-0
		£4,500-0-0
	Received by cheque on Thos. Cook & Son, Bombay, for Rs. 7,500/-.....	£500-0-0
	Balance due	£4,000-0-0
	Total	£4,000-0-0

Rs. 4,000/-/-.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

129 No. 5.

Copy.

£2,000/-. Delhi, February 19th, 1917.

Sixty days after date, I promise to pay to Messrs. Ganeshi Lall and Son or order, the sum of two thousand pounds sterling for value

received. (Sd.) Charles G. Collins, Lt. Col. Payable at Messrs. E. Curtice & Co., 8 Clarges Street, London, W.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

No. 6.

Lt. Col. C. G. Collins has told that he will call in on you next Thursday the 22nd instant and will sign a sixty day draft on his Agents in London payable to ourselves and we should be obliged if when you have collected this draft if you will credit the same to our account.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

No. 7.

Ganeshi Lall & Son,

The Emporium,

No. 13 Drummond Road, Agra & Simla.

The 20th February, 1917.

To Messrs. Ganeshi Lall & Son, Jewellers, of Agra, Delhi.

DEAR SIR-: I have taken delivery of all the stones and necklace which I have bought yesterday morning to the value of £2500 and paid a cheque for £500 and given you a sixty days' draft on my Agents in London for £2000.

I have also received from you the large emerald I bought of you yesterday evening weighing 19 Rattis about the value of £2000 for which I am going to give you a sixty days' sight draft on
130 my Agents in London, through your Agents Messrs. Thos. Cook and Son in Bombay on Thursday the 22nd of this month. Yours faithfully, (Sd.) Charles G. Collins, Lt. Col.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

No. 8.

Lieut. Colonel C. G. Collins,

51 South Street, Park Lane, W.

Howe Battalion, Royal Naval Division.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

No. 9.

Copy.

No. B695,928.

£200/-. Bombay, 22nd February, 1917.

Sixty days after date pay Ganeshi Lall and Son or order the sum of two thousand pounds Stg. and charge my account. (Sd.) Charles G. Collins. To Messrs. E. Curtis & Co., 7 Clarges Street, London, W.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

No. 10.

Thos. Cook & Son.

Bombay, 3rd May, 1917.

Messrs. Ganeshi Lall and Sons, Agra.

DEAR SIRS: We beg to confirm our telegram of today reading as follows: "Both Collins' Drafts unpaid marked no advice."
131 We shall be glad to receive your further instructions in the matter. Yours faithfully, (Sd.) Per Pro Thos. Cook & Son.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

No. 11.

Post and Telegraphs.

DF LF 286 Yokohama I MS 12 LCD Ganeshihall Agra.

Hold Drafts Sixty Lays Longer Delay Unavoidable. Colonel Collins.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

No. 12.

Thos. Cook and Sons.

Bombay, 25th June, 1917.

Messrs. Ganeshi Lall and Son, 13 Drummond Road, Agra.

DEAR SIRS: We beg to inform you that we have to day received a cable from our Head Office dated 22nd June reading as follows:

"Referring to your telegram of sixth Collins both drafts referred to not paid answer no advice."

and we have today wired you accordingly. Yours faithfully, (Sd.) Per Pro Thos. Cook & Son.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

No. 13.

Harry Morser.

37 Hatton Gardens,
London, 28th September, 1917.

Mr. Ganeshi Lall, Agra.

My Dear Friends: I beg to acknowledge receipt of your esteemed letters and different cables and confirm my different cables
132 which no doubt you have received. I had to postpone writing to you fully until such date when I should be in a position to give you full information regarding Collins. If you have not heard from me at once in answer to your cables, please do not think for one moment that I have neglected the matter but I simply did not care to telegraph unless I had definite news. I also had the visit to Messrs. Sanderson Solicitors whom I have given every information and assistance that I could, I personally did my very best to find out all I could about this man, but when I saw that such channels as I should be compelled to use were close- to me I considered it in your own interest to employ a private detective who has far more facilities than I have. I found this man in Mr. Brewster Kemp who has been 35 years with Scotland Yard, I arranged with him the fee and his investigations are embodied in the enclosed report a copy of which I have given to your Solicitors. I am extremely sorry that you have been the victim of a swindler, and up to the time of writing it has been impossible to find out where Collins is. Mr. Kemp is now working hand in hand with your Solicitors and you may rest assured that everything is being done and watched by me in your interest. My opinion is that when Parliament is sitting again to approach his brother who may settle the matter. At present the whereabouts of his brother are unknown, but he is sure to come to London when Parliament opens. I am enclosing herewith a statement of my expenses, and I should be very glad if you will kindly remit same. I trust and pray that you may be spared this heavy loss and you can rest assured that everything is being done in your interest. I hope you are enjoying excellent health.

With kindest regards from my family to you and yours,
I am always, Your sincere friend, (Sd.) Harry Morser.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

Private and Confidential.

The Holborn Stadium.

85 High Holborn, W. C. 1,

13th September, 1917.

Henry Morser, Esquire, 37 Hatton Garden, E. C. i.

Re Charles Glen Collins.

DEAR SIR: I have to report that, acting upon your verbally conveyed instructions, having made inquiries respecting the above man, the information I have been able to obtain so far is as follows:

133 He is a member of the family of William Collins Sons and Company Publishers and Stationers, who carry on business in Glasgow, London and Australia, but he is in no way connected with the business. He is one of four brothers, two of whom, Godfrey and William, are Directors of the firm in question.

He formerly obtained a commission in the Gordon Highbinders and served with distinction in the Boer War. He subsequently went to the United States, where he married a Miss Wheeler, daughter of Mr. Wheeler, a member of a famous sewing machine manufacing firm.

At the outbreak of war with Germany, he joined the Naval Brigade and was appointed to the Command of the Howe Battalion, and served during the Gallipoli campaign, he eventually returned to London and lived at various addresses.

The address: 51 South Street, Park Lane, is a large block of residential flats. He has never lived there; he occasionally visited a Mr. and Mrs. Muntz. Mr. Muntz is believed to have served with Collins as a brother officer in the Gallipoli Campaign. He divorced his wife and Collins was cited as the co-respondent.

Collins and Mrs. Muntz suddenly left the country together and went to Colombo, thence to Bombay; later to New York and they were recently heard of in Norway. It is believed that Mrs. Muntz has been working with him in India, contracting these debts.

Charles Glen Collins was adjudicated a bankrupt in this Country on the 19th August 1904, with heavy liabilities. A second petition in bankruptcy was filed against him in 1916, but he did not surrender to his examination.

On the 16th March 1912 he was arrested for obtaining money by means of worthless cheques at the Victoria Hotel, Sligo, but the charge was subsequently withdrawn and it is supposed the matter was settled by his friends.

He is also believed to have obtained money by means of worthless cheques in Vienna.

One of his brothers is Major Godfrey Pattison Collins, former Secretary to Colonel Seely, and now private secretary to Mr. Gulland M.P. who is a Liberal Whip to the present Government.

I am informed that Mrs. Collins is about to divorce her husband in New York.

Mrs. Muntz is the daughter of a Mr. Benn, a very rich iron founder and I am seeking an early interview with him and also with Major Godfrey Collins, with a view to obtaining, if possible, the present address of Charles Glen Collins and possibly a settlement of this account or some security for it.

I understand that the Official Receiver recently obtained possession of some shares left to Collins under his grandfather's Will and these have been disposed of for the benefit of the Creditors.

I have interviewed Mr. Edward Curtice of 8 Clarges street Piccadilly, who has furnished flats at this address; he also has the Curzon Hotel, Broadstairs, and the Philbeach Private Hotel, Kensington. He informed me that he has known the Collins family for many years, especially Charles Glen Collins. The last he heard of Collins was from Bombay, when he, Collins, informed him that he proposed purchasing certain Oil properties in South America; later he sent word by a friend (unknown to Curtice) that he was forwarding to Curtice a sum of £11,000 to cover certain liabilities contracted. This money, however, has not yet arrived, but Curtice states that he is expecting to hear from Collins in the near future, and has promised to acquaint me at once should he hear.

134

Mr. Curtice states that he was not aware that the Bill had been drawn on him until someone called to collect it.

I am pursuing the inquiry with a view to learning the present whereabouts of Collins and I hope to be able to obtain this information very shortly when a further report will be submitted.

I am, dear sir, yours obediently, (Sd.) William B. Kemp.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. (Seal.)

No. 14.

In the Court of the Chief Presidency Magistrate, Bombay.

Case No. 662/W. of 1917.

Brijmohan Lala Ramkissondas, of the Firm of Ganeshi Lall and Sons, Complainant,

vs.

Colonel Charles Glen Collins, Accused.

I, Thomas Joseph Strangman Advocate General of Bombay India do hereby certify:

1. That the offence with which the accused is charged is that of cheating and dishonestly inducing delivery of property.

2. That the offence of cheating and dishonestly inducing delivery of property is punishable under section 420 of the Indian Penal

Code with either simple or rigorous impris-nment (the latter being imprisonment with hard labor) which may extend to seven years. Dated this 30th day of November 1917. (Sd.) T. J. Strangman, Advocate General of Bombay.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. (Seal.)

135 Chief Presidency Magistrate's Court.

Bombay, 1st December, 1917.

I, A. H. S. Aston, Esquire, Chief Presidency Magistrate, Bombay, do hereby certify that a prima facie case of an offence of obtaining property by false pretences under section 420 Indian Penal Code within the jurisdiction of my Court in respect of jewel/ry valued at £2,000 has been established against the accused Lieut. Col. Charles Glen Collins and that the alleged act constitutes under the law in force in the Bombay Presidency an offense punishable under the Indian Penal Code with imprisonment of either description (rigorous simple) for seven years and a fine.

Given under my hand and the Seal of the Court this 1st day of December, 1917. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. (Seal.)

Motion of Charles Glen Collins to Dismiss.

[Filed Oct. 26, 1918.]

U. S. District Court, Eastern District of Louisiana, New Orleans Division.

No. 15928.

In re Extradition Proceedings of CHARLES GLEN COLLINS.

Now comes Charles G. Collins whose extradition is sought in these proceedings and moves the Court to dismiss the affidavit herein and to discharge him from custody without day because this Court is without jurisdiction to try appearer or to hear and pass upon the questions raised by the affidavits or the rights of this appearer on the grounds and for the reasons following, to wit:

1st. Because that heretofore, to wit: on the 13th day of February, 1918, Affidavit was made by Thomas F. Carlisle, His Britan-ic Majesty's Consul General at New Orleans against appearer herein, Charles G. Collins before R. H. Carter, United States Commissioner of the Eastern District of Louisiana for the alleged offenses, matters and things referred to and declared upon in the affidavit by Gerard M. Loly, British Vice Consul at the City of New Orleans which is the basis of these proceedings, which said affidavit by the

said Thomas F. Carlisle, His British Majesty's Consul General was for the purpose of having this appearer extradited from this Country where he then was and now is to British India which is the purpose of the affidavit in these proceedings by the said Gerard M. Loly, British Vice Consul at the City of New Orleans; that upon the said affidavit of Thomas F. Carlisle, His Britan-ic Majesty's Consul General at New Orleans a warrant of arrest was issued
136 by the said R. H. Carter, United States Commissioner of the Eastern District of Louisiana and this appearer was thereupon arrested at the City of New Orleans by the United States Marshal of the Eastern District of Louisiana acting under the authority of the said warrant issued by the said R. H. Carter, United States Commissioner for the Eastern District of Louisiana and this appearer was duly arrested under the said affidavit which said affidavit is still pending and undisposed of.

2nd. Because the affidavit of Gerard M. Loly, British Vice Consul is not such as is required by law does not comply with the law and did not justify the issuance of the warrant of arrest and does not justify the holding of this appearer thereunder for the reasons.

(*a*) The said affidavit does not charge this appearer with having committed any crime and particularly does not charge him with having committed a crime for which, under the treaties between this Country and Great Britain, this appearer may be extradited.

(*b*) Because even if the said affidavit does charge such a crime herein immediately above referred to, the same is not made in the manner and form required by law by the said treaties particularly because the said Loly, Affiant therein, does not state the source of his information upon which his alleged affidavit is made, nor does he annex thereto any paper, document, copy or evidence which justifies the affidavit, nor does he give the ground of his belief of the truth of the matters and things stated in the said affidavit.

Wherefore, this appearer objects to and protests against this Honorable Court hearing any evidence, either orally or documentary, upon the affidavit hereinabove referred to and prays the Court to dismiss the said affidavit and to discharge this appearer without day. (Signed) Charles Glen Collins. (Signed) J. Zach Spearing, Atty.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me the undersigned authority personally came and appeared Mr. Charles G. Collins who being duly sworn deposes and says: That all of the allegations in the above and foregoing petition are true and correct. (Signed) Charles Glen Collins.

Sworn to and subscribed before me this 22nd day of October 1918 at the City of New Orleans, State of Louisiana. (Signed) J. Zach Spearing, Not. Pub. (Seal.)

137 United States District Court, Eastern District of Louisiana.

No-. 15927, 15928.

In the Matter of Extradition Proceedings of CHARLES GLEN COLLINS.

Proceedings Had Before the Honorable Rufus E. Foster, Judge United States District Court, Eastern District of Louisiana, on the 30th Day of October, 1918.

Appearances:

Judge R. H. Marr, representing the Petitioner.
J. Zack Spearing, Esq., representing the Defendant.

Offer.

Judge Marr: We offer certified copy of the proceedings had in the court of the Chief Presidency Magistrate, Bombay, with all the certificates thereto attached; that is in the charge of Ganeshi Lall & Sons, Jewelers.

Offer.

I next offer a certified copy of the proceedings had in the court of the Chief Presidency Magistrate, Bombay, in the matter in which the accused is charged with having fraudulently obtained jewels from the firm of Pohoomull Brothers.

Offer.

I offer in evidence the evidence taken before Sir John Dickinson, Knight, Chief Magistrate of the Police Courts in London, and the evidence taken in Glasgow before Alexander Stuart Duff Thomson.
And in connecton with these offers are attached documents, certificates and exhibits annexed to the testimony, and, further, the admission that the accused at bar is the same person who stands accused in Bombay and for whom extradition has been applied.

Mr. Spearing: I will not make the admission that he is the same person that stands accused, because I don't want to admit that he is accused, but this is the person (referring to Charles Glen Collins) that is cited.
The Court: You will admit that he is Lieutenant Colonel Charles G. Collins, late of the British Army?
Mr. Spearing: Yes; and that he is the person referred to in these papers.

Objection.

Mr. Spearing: I object to the reception of any of the documents, papers, certificates or copies that have been offered in evidence,
138 on the ground that they do not relate to and do not show the charge against the accused for an offence covered by any treaty between the Government of Great Britain and the Government of the United States, and they do not charge any offence which, under any treaty between those two governments, is extraditable; that the papers offered in evidence relate to an offence entir-ly separate, different and distinct from the offence charged in the affidavits filed in this court.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

Mr. Spearing: Reserving the benefit of the objection made to the admission of any of the papers and documents in evidence, I make the following objections:

First. That the certificates are not in proper form——

The Court: Which certificates are you talking about now?

Mr. Spearing: The certificate——

The Court: Of the Consul?

Mr. Spearing: Of the Consul.

The Court: Well, let's see what is the matter with that; what is wrong with that certificate?

Mr. Spearing: There is another certificate there, the certificate——

The Court: That is the certificate of the Consul. Is that all right?

Mr. Spearing: That seems to be all right. The certificate of the Chief Presidency Magistrate in one case, it does not refer to the number of pages, it simply says the — number of pages. That is in the Pohoomull matter, and in the other, it refers to the foregoing pages from 1 to 29, I believe it is, whereas the "foregoing" if you give it its true and technical meaning, means that which precedes and not that which follows. That is, all the papers and documents in there, in my humble judgment, are not admissible under any statute, and I am going to make special objections to them, but we are dealing now, as I take it, with a matter that is entirely technical, we are dealing with papers that we have absolutely no opportunity of comparing with the originals, and they must, I take it, speak for themselves, and that when an officer gives a certificate——

The Court: There are twenty-nine pages here. Then he says "the foregoing" instead of "the following," and the only difficulty with that is that one is stuck in front, and if he had stuck it on the back, it would have been all right. I overrule that objection. It is all sealed up.

Objection.

Mr. Spearing: Now I object to any of the papers or documents. Neither one of the sets from Bombay, either by Pohoomull Bros. or by Ganesho & Sons has the warrant of arrest and the copy of the origi-

nal deposition or depositions appended to the original warrant of arrest issued.

The Court: You don't object to the warrant of arrest, that is this first document here signed by A. H. S. Aston; that is all right; is it?

Mr. Spearing: There are two warrants of arrest.

The Court: Now then, the affidavit——

139 Mr. Spearing: In one case, the affidavit of the representative of Pohoomull and in the other case the affidavit of the representative of Ganeshi & Son.

The Court: That is down to the certificate on page 4. You don't object to that. You don't object to page 5 either, that is, the certified copies of the draft given and the letter written by Colonel Collins.

Mr. Spearing: Your Honor will see that there is an affidavit—I don't know which set your Honor has.

The Court: I have the first one that Judge Marr offered.

Mr. Spearing: You will find——

The Court: I have the one where he certified, "the foregoing twenty-nine pages," and it is headed "In the Court of the Chief Presidency Magistrate, Bombay." Now then——

Mr. Spearing: The information of an Indian named Birjmohan Lala Ramkishandas, at Bombay, Manager of Ganeshi Lall & Sons.

The Court: Birjmohan Lala Rankishandas.

Mr. Spearing: That is the affidavit upon which the warrant issued. As I construe the section of the Revised Statutes, that is all that can be admitted from India?

The Court: Why?

Mr. Spearing: Because the section of the Revised Statutes provides:

"In every case of complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended, if they are authenticated in such manner as would entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party escaped. The certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this section."

The Court: Isn't there another section that admits the depositions?

Mr. Spearing: If there is, I am not familiar with it.

Judge Marr: Here is Section 5271:

"In every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants or other papers offered in evidence shall be admitted and received for the purpose of such hearing, if they shall be properly and legally authenticated so as to entitled them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused person shall have escaped, and copies of any such

depositions, warrants or other papers, shall, if authenticated accor
ing to the law of such foreign country, be in like manner received
evidence; and the certificate of the principal diplomatic or consul
officer of the United States resident in such foreign countr
140 shall be proof that such deposition, warrant or other pape
or copy thereof, is authenticated in the manner required b
this section."

Mr. Spearing: That is the identical section I read. It says, "th
depositions upon which an original warrant of arrest issued." I
does not say "any depositions"; it confines and restricts it to "depos
tions upon which an original warrant of arrest issued, and that is th
affidavit.

The Court: Which warrant does that refer to? That refers to th
warrant of the Commissioners in this country, does it not?

Mr. Spearing: On the contrary, it provides for the certificate b
the Consular Agent "In every case of complaint and of a hearin
upon the return of the warrant of arrest, copies of the deposition
upon which an original warrant in any foreign country may hav
been granted, certified under the hand of the person issuing suc
warrant, and attested upon the oath of the party producing them t
be true copies of the original depositions, may be received in evidenc
of the criminality of the person so apprehended."

The Court: Here is this certificate: "I the undersigned, being th
Chief Presidency Magistrate of Bombay, do hereby certify that th
typed matter contained in the foregoing twenty nine pages is a tru
copy of the information of Brijmohanlal Lala Ramkishandas, of th
firm of Ganeshi Lall and Son, Bombay, taken on solemn affirmatio
before me on the 1st day of December 1917 and of the deposition
of the said Brijmohan Lal Lala Ramkishandas, Dattatria Ranchar
dra and Arthur Fuller in support thereof, sworn and taken befo
me on the 1st day of December 1917, and of the list of exhibits an
of exhibits thereto marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 an
14 and of my certificate." That identifies them all with the paper
this bunch I have before me at any rate.

Mr. Spearing: There are two bunches with the same certificate.

The Court: Let's get through with this one first because I will loo
at them as we go along. Here is the information of Brijmohanla
age twenty-five, occupation jeweller, residence Calcutta. Then h
goes on to identify these various exhibits.

Mr. Spearing: I am urging that the only one of that bunch the
that can be admitted in evidence is the affidavit commencing "In th
Court of the Chief Presidency Magistrate at Bombay, the inform
tion of Birjmohan Lala Ramkishandas, of the firm of Ganeshi La
& Sons," so that, I take it, is the affidavit on which the warra
issued; that is the charge.

The Court: According to this certificate, everything in this fi
was offered before this Indian court, and the warrant issued on
of this in here; so, as far as that goes, I will overrule that objectio
Now I will take up those others.

Mr. Spearing: I except to the ruling of the Court, and the reser
this note in lieu of a formal bill of exceptions.

Mr. Spearing: The other one is the same, and there is no use of any longer taking up your Honor's time on that second one.

The Court: There are three of them.

141 Mr. Spearing: There is a third one to which that objection is good, I think.

The Court: This is the evidence of John Richard Campbell Howie and Edward Curtice.

Mr. Spearing: Those affidavits, that third one, may it please your Honor, you will find those are affidavits taken in London and in Glasgow.

The Court: James Paterson, Hugh Allan, A. S. D. Thomson, John Richard Campbell Howie and Edward Curtice.

The Court: Those were taken on the 22nd of June 1918, and the ones in Glasgow were taken coincident with them, either a day or two before or afterwards. I submit that as to those, that those sections of the Revised Statutes must be applied.

The Court: Here is the certificate from the Under Secretary of State for India that these documents would be received for the same purpose in India.

Mr. Spearing: Yes, but the Revised Statutes require something else than that. The Revised Statutes, I submit, do not authorize the reception by this Court in evidence of any documents or any testimoney that was taken after the warrant of arrest issued.

The Court: They do not?

Mr. Spearing: I think that the Revised Statutes is clear. The test is whether the documents offered in evidence would be admissible in the foreign country which requests the extradition, and the sufficiency of that evidence is a question to be decided by your Honor. I take it that your Honor can only receive the evidence taken in a foreign country and out of the presence of the accused, such evidence as is affirmatively authorized by the statute, and that you cannot receive in evidence any other testimony, whether it be oral or documentary. It seems to me that the language of this statute is so plain that it does not admit of two interpretations, and that my friend on the other side is entirely wrong when he says that your Honor is governed in the admissibility of the testimony by the certificate of the foreign officer. That certificate cannot control your Honor, unless, under the law of this country, that certificate is made sufficient for the purpose.

The Court: I will sustain the objection as to the depositions from Glasgow and London.

Judge Mass: I reserve a bill to the ruling of the Court.

Mr. Spearing: I further object to the certificate of A. H. S. Aston, Chief Presidency Magistrate on the Ganeshi Lall affidavits and the certificate of Chunilal H. Setalvad, Acting Chief Presidency Magistrate. I object to those certificates on the ground that the certificates are no part of the testimony or depositions which were taken upon which the warrant was issued, and are but the expression and conclusion of the persons giving the certificates, which is not justified by the law, and is not binding upon the Court.

The Court: I don't think it makes any difference one way or the other. I will sustain that.

142 CHARLES GLEN COLLINS, being duly sworn, testified as follows:

Direct examination.

By Mr. Spearing:

Q. What is your name?
A. Charles Glen Collins.
Q. You are the party referred to in these affidavits from India, which we have just been discussing?
A. Yes sir; I am.
Q. You were in India at the time these various transactions are alleged to have taken place?
A. Yes, sir.
Q. Were you alone, or did you have anyone with you?
A. I had people with me.
Q. Who were they?
A. My fiancee, Mrs. Muntz, and her friend, Mrs. Olsen.
Q. You subsequently married Mrs. Muntz?
A. Yes sir.
Q. And that is the lady here, sitting in the court room now?
A. It is.
Q. Mrs. Olsen is dead, is she?
A. She died last Thursday in San Francisco, in a hospital outside of San Francisco.
Q. And you have been endeavoring to have her come here to testify in this case?
A. We did; certainly.
Q. And upon the day the case was fixed for a hearing last Friday, you received a telegram stating that she had died the day before?
A. Yes sir.
Q. Where was the party consisting of yourself and Mrs. Olsen and the present Mrs. Collins made up?
A. In Christiania, Norway, on August 30, 1916.
Q. What was the occasion of going to Christiania; who lived there?
A. Mrs. Olsen had a country home there, outside.

The Court: What is the purpose of this testimony?
Mr. Spearing: I am just leading up to show how this transaction came about, and the good faith of it, to disabuse the mind of the Court that anything like a false pretence——
The Court: Do you think that any testimony in defence is relevant, or anything of that sort?
Mr. Spearing: Why certainly, if I can prove he didn't make any false pretences.
The Court: It doesn't make the slightest difference if he did or did not. It is a question for the court in India.

Mr. Spearing: I admit, if I prove as a matter of fact, there was no false pretence——

143 The Court: I have nothing to do with that whatever. The question of identity and sufficiency of these depositions is the only thing before me.

Mr. Spearing: That simply means that we can't take any testimony whatever.

The Court: It does not make any difference if Colonel Collins should testify he made no false pretence, or anything of that sort. That is a question for the court over there, and not for this court.

Mr. Spearing: Of course if your Honor is going to rule that way, I will have to submit, but, with all due deference, I think your Honor is wrong.

The Court: I would like to see some case that says it is admissible.

Mr. Spearing: There are a number of cases which have gone up admitting testimony on behalf of defendant.

The Court: No question of defence can come before this Court in an extradition matter. That is a question for the court when the accused is tried in the country that requests his extradition. The only question here is the question as to the identity of the accused and the question whether or not he was in India at the time this alleged offence is supposed to have been committed. There are two things the defendant can show: either he is not the man wanted, or that he was not there at the time the offence is supposed to have been committed. Now he was there at the time and he admits he is the man.

Mr. Spearing: There is no doubt about that.

The Court: I will exclude everything else.

Mr. Spearing: To make up the record, counsel for the accused offers to prove that there was no false pretence on the part of this accused, but that, on the contrary, he made a full and absolute disclosure to the complainants, Pohoomull Brothers and Ganeshi Lall and Sons, and that they were fully advised of his financial condition and of the plans which he had, and the means which he had, of paying for these jewels.

The Court: What Colonel Collins is going to testify may be diametrically opposed to what the evidence is before me on these certificates, but I can't hear it.

Mr. Spearing: Will your Honor permit me to dictate into the record what I propose to prove by Mr. Collins.

The Court: Yes.

Mr. Spearing: I propose to prove by Colonel Collins that while Colonel Collins was in Christiania, Norway, he, in conjunction with Mrs. Olsen, by speculating in some shares of a steamship corporation, made a very large sum of money, approximately $150,000, or thirty thousand pounds sterling in the current money of Great Britain; that, shortly after making the profit above mentioned, said Mrs. Olsen, Mrs. Muntz and Colonel Collins started on a trip of rest and recreation, Colonel Collins being previously engaged in an active and vigorous share, as Commander of the Howe Battalion of

the British Army, with the rank of Lieutenant Colonel, in
144 what is known as the Gallipoli Campaign during the war which started in July and August 1914, and is still in progress, and Colonel Collins having been invalided home on account of illness. That he had previously taken part in the Boer War as an officer in the British Army. That after making this large profit above referred to, the party, consisting of himself, Mrs. Olsen and Mrs. Muntz, started on a trip; that among the countries visited by the said party as thus composed were Japan, China and British India; that while in Yokohama, Japan, during the month of October 1916, the said Mrs. Olsen and Colonel Collins had an interview with Mr. William H. Smith, a resident of the City of Boston, State of Massachusetts, at that time and now a resident of the City of St. Louis in this country, and at the time that the party were in Japan and China, Mr. Smith was temporarily located in Japan. That the accused and Mr. Smith had known each other some ten or twelve months previously and had done business together; that Mr. Smith sought an interview with the accused, and Mrs. Olsen was brought in because the profits which were made in the speculation or deal or transaction referred to were equally hers. That the said Smith stated substantially to the said Mrs. Olsen and to accused that he had the option to purchase certain very valuable oil leases in what was then known as the Goose Creek Oil Territory, a few miles out of the City of Houston, State of Texas, and also cer- other very valuable oil leases in or near the City of Tampico in the Republic of Mexico, which were controlled by one Charles D. Mitchell, a resident of the City of Houston, State of Texas, who was at that time the Vice-President and General Manager of the American Petroleum Corporation, incorporated under the laws of the state of Delaware, but operating in the Goose Creek Petroleum oil Fields, near the City of Houston; that the said Smith represented to the said Mrs. Olsen and to accused that there was an opportunity to make exceedingly large profits out of the said oil leases and lands, but that he, the said Smith was unable to finance the same and desired to secure financial assistance from some person or persons who were able to give it, and who would share the profits with him; that though the said Smith was previously unknown to the said Mrs. Olsen, he was known to and had an acquaintance with the accused, they having met and had dealings on prior occasions in the City of Boston and the territory adjacent thereto, which were visited by accused in former years; that after conferences and negotiations, the said Mrs. Olsen, the said Smith and accused entered into an agreement in writing dated at Yokohama, Japan, the 27th day of October 1916, by which the said three parties associated themselves for the purpose of financing, promoting or selling said oil property or leases situated in Tampico, Mexico, and in the Goose Creek Oil Section, and that with that end in view the sum of two thousand pounds sterling of British currency, or approximately ten thousand dollars American currency, was paid and handed to the said Smith for the purpose and with the understanding that he would leave for the United States to consummate the purpose which the said parties then had

in view; that the said Smith did in fact shortly thereafter
145 leave for the United States, with the said purpose in view; that in due time it became necessary to make further advances to the said Smith, or the said Mitchell with whom the said Smith had gotten into communication and with whom he was negotiating for the acquisition of the said oil properties both in Texas and in Mexico; that with the consent and co-operation of the said Mrs. Olsen, the sum of twenty-five thousand dollars was cabled to the said Mitchell in connection with the said transaction; that the said parties had the said oil fields, particularly those in the Goose Creek section, examined and received most favorable reports of their condition and of the probabilities of large returns and large profits from the transaction and the said Mrs. Olsen, the said Smith and accused determined and agreed with the said Mitchell to acquire from the said Mitchell the oil leases and properties above referred to; that the said Mrs. Olsen and accused anticipated that they and the said Smith would make exceedingly large profits out of the deal; that at that time they were negotiating with George McBain, of Shanghai, China, representing a very large oil syndicate, which was practically the only real competitor of the Standard Oil Company, for the sale of the same options and property to the said McBain for his oil syndicate at a tremendous profit. We further offer to prove that the accused and his party reached Bombay, in British India, about the middle or latter part of December 1916. That intending to remain there for several months, they rented a bungalow residence on Mallabar Hill, adjacent to Bombay, Mallabar Hill being a very fine residence section of Bombay, where they established themselves; that while thus residing at the said residence, they visited the business establishment of Bohoomul Brothers, hereinafter called the complainants, and at various times purchased numerous articles for household and personal use of considerable value in the aggregate, for which the said Mrs. Olsen and accused respectively paid the said claimant, either in cash or by bank checks or bills of exchange, which, when presented, were duly paid; that the said purchases extended over a considerable length of time; that among the articles examined by accused was the jewelry referred to in the affidavit of the British Vice-Consul; that the said claimants persistently urged accused to purchase the same, notwithstanding accused's refusing to do so on the plea and for the reason as stated to said claimant, that accused did not have with him personally or to his credit at any place sufficient money to justify the outlay of the price of said jewelry for that purpose; that notwithstanding accused's explanation and statement that he was not then possessed of sufficient funds to justify the purchase of the jewelry in question, the complainants continued to press him to make the purchase, frequently visiting accused's residence above referred to with that end in view and offering to sell and deliver the jewelry to accused on credit; that accused explained to the complainants that he and the said Mrs. Olsen were engaged in the oil transaction or deal hereinbefore referred to, and that if he realized the profits which he anticipated, he would be in a position and able to purchase and pay for the jewelry

referred to; that the complainants offered not only to sell
146 and deliver the jewelry in question to accused on terms of credit, but offered and insisted upon selling other jewelry upon like terms; that upon purchasing the jewelry in question, accused paid the claimants twenty-four hundred and sixty-six pounds sterling British currency or its equivalent, on account of the jewelry.

We further expect to prove by the accused that the prices finally agreed upon in the transaction above referred to were only reached after much negotiation, amounting to haggling, and after and not until after the claimant was fully informed and advised on accused's inability to pay the balance of the price of the said jewelry in cash at that time and of his expectation of realizing large profits out of the oil transactions and deals hereinabove referred to.

We further expect to prove by the accused that even after the purchase of the jewelry referred to in the affidavit of the British Vice-Consul, the complainants continued to press and urge accused to purchase other and still more valuable jewelry from them on terms of credit, even sending their representatives with the jewelry to accused on board the steamer on which they left and to other cities which accused's party visited; that accused declined to accede to the requests of the claimants on the ground, and explaining to the claimants, that the said Mrs. Olsen and accused had not yet realized the profits which they anticipated from the oil transactions and deals.

We further expect to prove by the accused that neither he nor Mrs. Olsen nor Smith realized any profit whatever from the said oil deal, but that on the contrary the money which they invested therein is all lost through the machinations of Mitchell from whom they had an option.

We further expect to prove by the accused that accused did not represent himself to the complainants as a wealthy man, except in the manner hereinabove referred to; that he did not represent himself as a partner of the firm of William Collins Sons & Company of Glasgow and London, nor did he represent himself as being at that time a colonel in the Howe Battalion of the Royal Navy Division, though accused had been a lieutenant Colonel of said battalion, and had rendered other services to the Government of Great Britain in the war with Germany which was then being carried on, as well as in previous wars, and that accused did not represent to complainants that he had a right to draw a draft, or is entitled to additional credit, except in the manner and to the extent hereinabove set out.

The Court: I don't think any of that is relevant, Mr. Spearing.

Mr. Spearing: I also want to off Mr. Smith as a witness.

The Court: He will testify on the e lines?

Mr. Spearing: As far as this re to. Of course he was not present when the jewels were purchased.

The Court: He will only testify to this oil transaction?

Mr. Spearing: That is all.

The Court: All right.

Mr. Spearing: I will offer the witness Mr. William H. Smith, presently residing in the City of St. Louis.

The Court: This testimony is offered for the purpose of
147 corroborating the testimony that Colonel Collins would have given regarding the oil transactions?

Mr. Spearing: Yes.

Mr. Spearing: I also offer the agreement and options referred to in the statement of—Colonel Collins would testify to, and the correspondence consisting of letters, telegrams and cables, substantiating the testimony as to the oil deals referred to in the statement of what he would testify to.

The Court: I will exclude that also.

Mr. Spearing: I also now offer in evidence letter from Ganeshi & Sons to Colonel Collins, dated at Delhi February 25th, 1917.

The Court: Was that after the charge was made?

Mr. Spearing: No; before the charge was made. The charges were made in the latter part of 1917, and this was coincident with the purchase of the jewelry.

Mr. Spearing: I also offer in evidence original letter from Ganeshi to Collins, dated February 17, 1917, and the original statement of account furnished to the accused by Ganeshi & Sons, dated February 21, 1917.

I also offer cablegram from Ganeshi & Sons to Collins, cablegram being dated Delhi, February 25, 1917, addressed to Colonel Collins at Bombay.

The Court: I will exclude those.

Mr. Spearing: I offer original letter from the attorney or solicitors of Pohoomull Bros. of Bombay, dated July 12, 1917, addressed to Colonel Collins at the Manoir Hotel, and also an original letter from the same parties to Mrs. L. L. Muntz, being the same date July 12, 1917.

The Court: I think these are all irrelevant.

Mr. Spearing: Of course I am reserving an exception to the rulings of the Court.

The Court: All right.

Mr. Spearing: I also offer in evidence original letter from Pohoomull Bros., receipts and acknowledgments, by them dated as follows: February 27, 1917, being an acknowledgment of the check for 15,000 rupees, receipt dated February 27, 1917, being in the form of a letter of acknowledgment of a draft for four thousand pounds.

Also letter dated March 3, 1917, in reference to the draft, stating in substance that Pohoomull Brothers had instructed their bankers not to present the draft, also guarantee dated January 21, 1917, referring to a silk robe, and a statement showing the weight of certain jewelry.

The Court: I exclude that. Those are all along the line of showing it is a commercial transaction.

Mr. Spearing: Yes; purely and only a commercial transaction.

The Court: It was a commercial transaction?

Mr. Spearing: Certainly it was.

The Court: I will make the same ruling. I will exclude it all.

Mr. Spearing: I also offer in evidence numerous and various letters and certificates showing the military standing and title of the accused, before and after he was in India, but all before the charges were brought.

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The Court: I think they are no more relevant than the others. I will exclude those. Is that all, Mr. Spearing?

Mr. Spearing: Yes sir.

The Court: I will look these documents over. I can't do it right now. Let the case go over until to-morrow morning.

Hearing resumed pursuant to adjournment.

Mr. Spearing: May it please the Court. *I*t the risk of being thought entirely too persistent, I am going to simply call your Honor's attention to the provisions of the treaty between this country and Great Britain as to the form of trial, if your Honor will permit me to do so. I will read Article 10 of the treaty of 1842, which is the extradition treaty, or the treaty which contains the extradition proceedings, the subsequent treaty or treaties merely adding to the crimes for which extradition may be had. It reads: "It is agreed with the United States and Her Britannic Majesty * * * deliver up those charged with the following offences" (naming them). "Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or persons so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed." Provided that it shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found as would justify his apprehension and commitment for trial if the crime or offence had been there committed. And then it goes on giving the jurisdiction and so forth.

A case very much in point is in the 25th Federal, case of Kelly, which was a case in Minnesota, 25th Federal, p. 268, In re Kelly, the syllabus of which reads: "On the examination of the party before the United States Commissioner in the State of Minnesota in extradition proceedings under the treaty of 1842 with Great Britain," which is the one I just read there, "he has the right to examine witnesses in his own behalf." Now, there are other cases to the same effect——

The Court: Did you look at this case of Charlton?

Mr. Spearing: I looked at that case; yes.

The Court: You see that disposes of your contention about the examination that you request.

Mr. Spearing: I beg your pardon?

The Court: I say it disposes of your contention.

Mr. Spearing: You mean with reference to the calling of witnesses from another state?

The Court: Yes sir.

Mr. Spearing: It merely says it didn't change the rule of evidence that theretofore existed.

The Court: That was in August of 1882?

149 Mr. Spearing: Yes, that is the one I read, and it does say it doesn't increase the right to give testimony, but that was a case in New York, that case, and this is a case here, in Louisiana, where it is well known and axiomatic that the accused before a committing magistrate has the right to put in any testimony in his own behalf, and the court, upon considering the testimony, determines whether or not he should be committed, and so your Honor must determine whether or not, upon all of the facts of the case, not merely an ex parte showing. This is more than a Grand Jury hearing. True in a Grand Jury—and that is referred to in the Charlton case—before a Grand Jury there is no compulsion to hear witnesses on behalf of the defendant, or the accused, but this is an open hearing, this is not a Grand Jury hearing, and this is on a hearing, as I conceive the law, as though your Honor was sitting as a committing magistrate, and must determine in your position here whether or not this party must be committed to trial in India, and must determine that, not upon merely the ex parte testimony of those parties who live in India, but upon a hearing according to the laws of Louisiana, as it seems to me, as clearly set out in the extradition treaty. I submit with all seriousness, may it please the Court, where the treaty itself provides that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive of person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been committed there.

Now suppose that were here, in this city, and that Colonel Collins stood charged by those gentlemen from India living here, with having bought those goods under false pretences, just as they have charged him with having done there, and Colonel Collins was hailed before the committing magistrate, whether it would be before the First or the Second Criminal Court, depending on which side of Canal Street the offence was said to have been committed, he would determine whether or not by the testimony before him for the State and for the accused, the accused should be committed for trial. Now it is clear, if your Honor does not agree with me, that there are cases where a person is arrested, he cannot be taken out of that jurisdiction for trial on this charge—there is that case where the person was attempted to be taken to another state, because it was contended that the judge of that state was sitting closer, so far as miles were concerned, closer in distance to where the man was arrested than was the judge of the district in which the marshal was acting, and the court held that the man arrested be returned to the district—meaning the state—in which he was arrested, and that the trial must be held according to the laws of that state. In this case in the 25th Federal—and there are others along the same line—all of these cases have heard testimony—and in that case in Minnesota, the court held that, according to the laws of Minnesota, the person whose extradition was sought, was entitled, if he had been charged with the same offense in Minnesota, he was entitled, under

the laws of Minnesota, to have a hearing and to put in evidence in his own behalf, and, under those circumstances, he was entitled to do it on extradition proceedings. That is what we are seeking here. If the rule were as your Honor ruled this morning, why it is easy to establish the identity of the person; Colonel Collins' identity can be established; there is no necessity of admitting it; there is no necessity of denying it, because it can be established he was there; there wasn't any question about that, and if those are the only two points that can be heard upon an extradition procedure, then I submit, if the Court please, that anyone who has a personal, professional or commercial claim against another, all he has to do is to make affidavit setting out facts and circumstances, and the party must be taken to that foreign country, whether close or near, to answer the charge there, with a result that no one knows. I submit that is not the law, and moreover, this country has sought to conserve and protect the rights of those who sought an asylum, and, if you will, whether it was justifiable or not, those who were found in the state, to give them the rights they would have if charged with a similar offence under the laws of that state where they may be. Take that testimony, your Honor, as before you there. It places this accused at a very very great disadvantage. True your Honor has held that it is admissible, and that the certificate as given is admissible, but your Honor must conclude that that is nothing but a lot of hearsay evidence. As I recall it, there is in this letter from those London solicitors to a man living in Bombay, telling their London solicitors, telling their clients in Bombay, what their investigations in London—not under oath—none of those letters are under oath—why they produce that letter to the judge in Bombay, and it is in the record, and your Honor has admitted it as though the man who is presumed to have written that letter had absolutely testified to the facts. You have a letter from a man by the name of Morser to Ganeshi & Sons, stating his investigation, and he finally concluded it was necessary to employ a private detective, and then you have the report of the private detective. Why if that is admissible, anybody that is found in this country——

The Court: The certificate says it would be admissible.

Mr. Spearing: It would not be admissible here.

The Court: The certificate says it would be admissible.

Mr. Spearing: I see, but it would not be admissible here. Your Honor has admitted it already because the certificate of the United States Consul is there, but if it is admissible here——

The Court: All of this evidence was admitted before the magistrate.

Mr. Spearing: The magistrate, yes, and the United States Consul has said that it is admissible there, but your Honor knows it would not be admissible here; your Honor would not admit that testimony here if the accused was charged with an offence here and it was attempted in this country to offer in evidence on any trial, civil or criminal, a letter from an attorney——

The Court: Yes, but they may have different rules of practice if they want to.

Mr. Spearing: If they want to, among their own citizens or citizens of other countries that are found there—they have got to submit to it; but this treaty, I submit, may it please the Court,
151 is to the contrary; this treaty says that the hearing shall be—not according to the rules of the country seeking his extradition—but according to the rule of the country, the rules of the place, whether it be Louisiana or California or Ohio or Maine, the rules of the place where the accused is found.

The Court: But that still does not make this inadmissible.

Mr. Spearing: No sir; not under the certificate. I only mention that character of testimony that is in there to show what a hardship it is on the man who is arrested in a state like this and is sought to be taken to a place like India, where they admit testimony of that kind, and it may be that the officials, the high officials of Great Britain and of this country, concluded that they wouldn't be willing to give up the person who is even temporarily in that country, even though, if you will, with a bad purpose, though in all seriousness I don't believe that the accused was here for a bad purpose, but they were not willing to give up the party unless after hearing, as it states here, according to the laws of the place where the fugitive or person so charged shall be found—and this is the place where he was charged and found, and this is the place that shall govern the manner of the trial, and not what shall or shall not be admissible under the laws of India. It is true that under the laws of this country, under those Revised Statutes 5271, inasmuch as the consul of this country has certified that under the laws of India that testimony is admissible, and inasmuch as your Honor has construed that that was the testimony upon which the warrant was issued, of course that is admissible here under that ruling; it would not be admissible if this was an original trial, admissible here, but I submit that is all the more reason why this accused and his witnesses should be heard, and then your Honor may conclude whether or not there is such a probable cause as would justify the turning over of this accused to an officer of the foreign government, to be taken back to India, where testimony of that character may be admitted against him. Take that report of the private detective in London, hearsay of the worst kind. It may be that that is admissible in India. Your Honor knows, and I know, that it is not admissible here, though under your Honor's ruling, if the certificate is attached, it is admissible in this case.

The Court: I say, it is a settled rule of this Court that, in extradition proceedings, no matters of defence are admissible; there are only two questions that can be inquired into, the question of identity and the question of whether the accused was present in the demanding state at the time the crime was supposed to have been committed. It has been ruled that way many times. So far as I know, I have not been the first one that has ruled that way.

Mr. Spearing: In my investigation, I didn't come across any.

The Court: The question of foreign extradition is somewhat—this is the first case I have been called upon to hear myself, because usually it goes before the Commissioner, but that is a habeas corpus proceeding——

Mr. Spearing: Your Honor will recall that in this Charlton case, that was under a treaty with Italy, and that is the way the
152 court construed it, and in construing this section of the Revised Statutes——

The Court: The treaty with England is the same.

Mr. Spearing: There is a little difference.

The Court: No material difference.

Mr. Spearing: The court says there is not and cannot be any uniform rules as to when an examining magistrate shall hear the witnesses produced by the accused person. The proceeding is not a trial; it is confined to a single question, whether the evidence presents a prima facie case sufficient to hold the party for trial.

The Court: That is usually regulated by local statutes. The local statute here does regulate that and does admit the testimony.

Mr. Spearing: Your Honor knows, of course that in these extradition proceedings, after it leaves this court, it is different from what is ordinarily the course, because the only way you can get an appeal is by a habeas corpus; there is no appeal or writ of error in the technical sense.

The Court: Unless you have the right to apply to the Secretary of State.

Mr. Spearing: We have no right to appeal to the Secretary of State in the sense that we take an appeal from the judgment of a court.

The Court: Well, I don't know in that sense exactly, but I imagine that you would have the right to apply to the Secretary of State and there present such evidence as he cares to hear. The governor of one state, the governor of Mississippi, sent a request for the extradition of a fugitive from the State of Mississippi, why the governor of the State of Louisiana would have authority to hear and determine whether or not to issue the warrant or not, upon the warrant of the magistrate of the demanding state. I don't know whether you have that right to appeal to the Secretary of the United States or not.

Mr. Spearing: I don't know. There is no provision which requires or permits that as a legal right. The only thing to be done would be to make certain representations to the Secretary of State.

The Court: Why don't you make those representations?

Mr. Spearing: The representations of the judge who heard the case are entirely and essentially different. There is no testimony heard in the sense of a trial, before the governor of the State; all that he requires is that there has been a warrant of arrest, that there has been an affidavit and a warrant of arrest, and if the accused is in the State. Now it has happened again and again that the governor of a state has said "No, I will not deliver up this fugitive." Your Honor will recall the well known case; I think it was a man by the name of Taylor, connected with the accused governor at the time of

Kentucky, when Goebel was killed. He fled over to the other side *side* of the line, and the governor of Indiana says, "No I will not give up Mr. Taylor; you can't take him into Kentucky for a trial." That was long after the close of the trial of the case. The laws of the various states are practically the same, and a man tried in Louisiana—I am talking now about a man against whom there is no local prejudice, as there was undoubtedly against Taylor in that instance—he is just as apt to get a fair trial in one state
153 as he is in another, I know of one case when Governor Hall——

The Court: Isn't Colonel Collins just as apt to get as fair a trial in India?

Mr. Spearing: In my judgment, no sir. The very fact that they admit in evidence a letter from the complainant's counsel or solicitor to him, a letter from a friend of his telling his conclusions from investigation that he had made, and a report from a so-called private detective, the fact that they admit all of that in evidence, to my mind, I think, is conclusive evidence that he could not get a fair trial, because if that evidence is admissible there, he cannot get a fair trial there, and he cannot get a fair trial any where where they admit that.

The Court: What about taking testimony in foreign countries by commission?

Mr. Spearing: Oh, they may take testimony, if the court please, but these are ex parte statements.

The Court: I don't know if they are admissible in the trial on the merits there; they are admissible before the committing magistrate for the purpose of starting the proceedings, just as evidence on information and belief would be admissible before me for the purpose of starting these extradition proceedings. This was brought out in the Charlton case. Charlton made a strong effort to resist extradition. When he went back he was acquitted of the crime of murder; he was found guilty of manslaughter and sentenced to one year.

Mr. Spearing: But in the Charlton case there was no attempt to introduce testimony that he was not prima facie guilty. The testimony there was as to something subsequent to the commission of the offence.

The Court: It was a matter of defence.

Mr. Spearing: But that did not enter into the prima facie case. There is no situation where a man, if he is inclined to do so, cannot make out a prima facie case. Your Honor knows that, of course, in your practice and in your judicial proceedings, just as does any other lawyer. Now these men make out a prima facie case, to a very great extent, if not entirely, by, not testimony, but the statement of these witnesses, so called in London, who have made these investigations, and the question comes up, how these witnesses are here and how they are going to get over to India, and I urge your Honor that this Charlton case merely follows the general rule, that it is the character of the law that is to control in the place where the accused is found.

The Court: Let's see what these people say here.

(Documents handed to Judge, who peruses same.)

Mr. Spearing: That letter from Morser and that report of the private detective are in the Ganeshi matter. I don't think they are in the Pohoomull matter. There are the letters.

(Counsel hands documents to the Judge.)

The Court: That is what I ruled out, is it not?

154 Mr. Spearing: No; it was this that you ruled out.

Mr. Spearing: This is a letter from Harry Morser to Ganeshi Lall, and here is the report of the so called private detective to whom he referred the case in London.

The Court: How much is the rupee to the pound?

Mr. Spearing: I don't know sir.

Judge Marr: Fifteen. Your Honor will observe there is nothing in any of the evidence that would indicate a value, that is, that the Court would know anything about—I am not talking about the individual who occupies the bench, but I don't know if the Court will take judicial notice of the pound.

The Court: Sure, I will take notice of what a rupee is, that is, its approximate value. I couldn't take notice of the actual rate of exchange.

The Court: All right, Mr. Spearing. I have read the evidence now.

Mr. Spearing: I assume your Honor has not changed your mind with reference to the admission of this testimony that I offer?

The Court: No.

Mr. Spearing: Then I submit, if the Court please, that the record as made up doesn't show any offence, criminal in its nature, and that this is an attempt on behalf of those jewelers;

The Court: There are three different people. He went to one man and bought certain lots of jewelry and gave them a check for five hundred pounds, which was paid, gave a draft for two thousand pounds on Curtice & Co., or whatever it was, and gave them a promissory note. Now that Curtice note or draft was not paid and came back with the notation "Not authorized to draw." Before he gave that, the evidence shows that he went to the International Bank, and they suggested that he send a telegram to have his agents in London pay the International Bank sufficient funds to cover this other draft—what was it, five thousand pounds?

Mr. Spearing: Five thousand pounds was the Pohoomull matter.

The Court: He came back and he told the men that he had sent the amount, that it was all right and that the money would be paid, and they accepted the draft, and then the money was not paid. That draft was dishonored, "No authority to draw." Now, take those two transactions just by themselves, that makes a clear case prima facie of obtaining goods by false pretences.

Mr. Spearing: In the Ganeshi matter the amount involved was four thousand five hundred pounds, of which he paid five hundred pounds in cash.

The Court: Paid five hundred pounds.

Mr. Spearing: Paid five hundred pounds; he gave his note for two thousand pounds and gave a draft on Curtice & Co. for two thousand pounds in the Pohoomull matter——

The Court: Well, I attach no particular importance to the note. A man might give his note and for various reasons might not be able to meet it; that is a mere promise to pay.

Mr. Spearing: Well, isn't a time draft the same thing?

155 The Court: I don't think so.

Mr. Spearing: There was a time draft there also.

The Court: A draft is exactly like a check on a bank. A man has no business to draw drafts unless he is authorized to draw them.

Mr. Spearing: The difference between a draft, may it please the Court, and a check on a bank is that the check on the bank is a promise to pay at sight, is an order to pay at sight; a check is entirely separate and distinct from a draft in that it is an immediate order and presumes that the amount is there at that time. A time draft—and in each instance these were time drafts—does not carry with it a suggestion that there are any funds in hand at that time, but it is merely like——

The Court: Carries with it the suggestion that he is authorized to draw; whether it is a time draft or a sight draft, it doesn't make the slightest difference. If this case was tried before a jury, and there was no evidence that he told this man from whom he bought the jewelry that this draft would be paid, and the draft came back with the notation "Not authorized to draw," and nothing else but that, the jury would be warranted in finding him guilty.

Mr. Spearing: I submit that would not be so on a time draft, because a time draft is nothing more than a promise that when it matured it will be paid, just as a term note is, and I submit——

The Court: Will be paid by the person on whom it is drawn.

Mr. Spearing: It will be paid and there will be money there to pay it.

The Court: That he was authorized to draw it and it will be paid, and it also imports that the party on whom it is drawn will accept it for payment when it is presented.

Mr. Spearing: There is nothing patent here, even on that ex parte statement, showing that it was ever offered for acceptance, any pretence that it was ever offered for acceptance, or that anybody ever indicated that it was to be presented for acceptance?

The Court: It was presented for payment and returned with the notation he was not authorized to draw.

Mr. Spearing: And then it was presented again. In one of those, and I think in both of those, the telegram of the accused to both of these parties that he hadn't completed his financial arrangements and not to present the draft for another sixty days—that is all in there. In the Pohoomull matter the amount was larger, and he first gave a draft on Curtice for five thousand pounds, but that draft was subsequently surrendered so they testify—they apparently had it still in their possession—at all events, it was cancelled.

The Court: They gave a fifteen thousand — check to pay back to him when the draft was paid, and it was in that transaction that he

made the statement about having telegraphed, that the money would be paid to the agents of the International Bank in London.

Mr. Spearing: I think your Honor will find——

The Court: Of course the point applies in the other one.

Mr. Spearing: I think not. In that transaction, it was the
156 first draft for five thousand pounds that was taken to the International Bank, and then they suggested that cablegrams be sent to ascertain if that would be paid, and it was after that that that draft was cancelled, the one thousand pounds was paid and another draft on Collins & Co. for four thousand pounds was given. That was that transaction. Now it seems to me that this also—I must necessarily be confined in the argument before your Honor to what is shown in those affidavits—those affidavits also show that these parties had other transactions, and I submit the conclusion is very clear: It is merely a bargain and sale on credit.

The Court: All these transactions were just at that time?

Mr. Spearing: And the other transactions at that time preceding that.

The Court: All within the space of a few days.

Mr. Spearing: Comparatively few days; a week or two; may be two weeks, and those transactions were all paid, the goods were paid for, and there is no question about that, and here these goods subsequently were purchased, and when you come to Pohoomull, that testimony indicates that it was nothing more nor less than a commercial transaction, a bargain and sale upon terms of credit.

The Court: Induced by false pretences.

Mr. Spearing: Of course if your Honor concludes it was false pretences, but I am trying my best——

The Court: It is quite patent on the face of the papers. Here is a man buys some ten thousand pounds' worth of jewelry, nine thousand pounds' worth of jewelry or something like that, and drew drafts on people that returned them with the notation that he was not authorized to draw, why it is fraudulent on the face of it. There is no reason why anybody should buy jewelry unless you have got the money to pay for it; buying flour or something else, why it would be different, but with pearl necklaces and things of that sort——

Mr. Spearing: I submit that the character of the goods purchased does not affect the criminality of the act in the least.

The Court: Not in the slightest, but it has some effect on the testimony.

Mr. Spearing: If a person goes down to one of the jewelry stores here and buys a large amount of jewelry on the representation that he is wealthy and will pay for it as a future date?

The Court: That is a different thing. If he goes down and represents himself as a wealthy man and will pay at a future date, that may or may not be a case of fraud, but when he goes and says "I will pay you now, not in the future, but I will give you a draft right now; I have telegraphed these people and they have deposited money in the International Bank and the money will be paid," that is just like giving a check on a bank. It is not a credit transaction at all, that is a cash transaction, and when he is not authorized to draw those checks

why it is clear fraud; there is no other way to state it. It makes no difference whether Lieutenant Colonel Collins was or was not—I put all that to one side. Here is evidence tending to show he was an undischarged bankrupt and those sort of things, but just on
157 that transaction itself, buying these articles of jewelry and giving drafts, which drafts were returned with the notation "Not authorized to draw," I say that makes a prima facie case of fraud, obtaining goods by fraudulent pretences.

Mr. Spearing: Of course if your Honor has reached that conclusion, there is nothing that I can say that can change your conclusion.

The Court: Not a thing; there is nothing you can say to change my conclusion on that state of facts.

Mr. Spearing: That is the only state of facts before you, because your Honor will not permit any other than those facts to go in. In my Statement I said he didn't represent that he had the right to draw the drafts.

The Court: That is a question for the jury over there.

Mr. Spearing: That evidence is not in. There is not any doubt apparently about the amounts he paid, and decidedly there is no doubt that this man told those people "I am in this oil deal and I expect to have the money then; I have not got it now; I expect to have the money then and have funds to pay this amount." There is not a particle of doubt about that, and there is no more criminality about that than if I were to go into a bank and buy ten thousand dollars' worth of jewelry, and say "I am in a deal by which I expect to make fifteen or twenty thousand dollars"——

The Court: That is all a matter of defence that will have to be made to the court in India.

Mr. Spearing: Unfortunately it does not go to England.

Mr. Spearing: It goes to India, where, with all due deference——

The Court: They have trial by jury there.

Mr. Spearing: I assume so, probably native Indians.

The Court: By a jury of white men.

Mr. Spearing: Frankly, I don't know whether it is by a jury of white men; I think not; I don't know whether it is or not.

Judge Marr: The Inspector of Police told me all Europeans were tried by white men.

The Court: I know that.

Mr. Spearing: One of the judges that signed these orders is an Indian, a native Indian.

The Court: Well, they don't try Englishmen with native juries.

Mr. Spearing: Well, I don't know about that.

The Court: I know they don't. He has just the same opportunity of making his defense there; that is where he is charged and that is where he ought to make it.

Mr. Spearing: The case I have here is one where the Court there, the Supreme Court, 187 U. S., held that extradition proceedings should not be used as a means of collecting debts.

The Court: No doubt about that; I don't think so either.

Mr. Spearing: I submit there is nothing in any of these papers except that these men want to collect a debt which is due by——

The Court: I have no doubt if they had been paid they wouldn't have made the charge.

158 Mr. Spearing: I have no doubt if they were paid now, they would withdraw the charge.

The Court: Then why not pay them——

Mr. Spearing: For a very good and sufficient reason——

The Court: —give them back the property or something.

Mr. Spearing: For the very good and sufficient reason, because they have not the cash with which to do it. With all frankness; they have been arranging to get it.

The Court: Haven't they got the property that they bought?

Mr. Spearing: They have not got it so it can be delivered, no sir.

The Court: It is unfortunate. There is nothing for me to do but to hold Colonel Collins for extradition. I will make such order and I will facilitate you in any way in making up your record you want to. Of course you can still apply for a habeas corpus, if you get busy right now. There are two circuit judges here now, with jurisdiction in a case of that kind, and if they turn you down, you can go to the Supreme Court of the United States, but they will be leaving here on Saturday, and they won't be back until some time in the latter part of November.

Affidavit of Complainant, Exhibits, Certificates, and Deposition of Witnesses.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans:

Before me, the undersigned authority, personally came and appeared Tom F. Carlisle, who being by me first duly sworn, deposed and said that he is British Consul General at the City of New Orleans; that he is informed and being so informed verily believes that Charles Glen Collins having committed the crime of obtaining property by false pretences, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 26th, 1917, fraudulently, falsely and feloniously pretended to Mahomed Ali Zainal Ali Raza, at Bombay, India, that he, the said Collins, was a wealthy man, a partner in the firm of William Collins Sons & Company, of Glasgow & London; that he was a colonel in the Howe Battalion of the Royal Naval Division; and was then on six months' leave; that he, the said Collins, then and there had a right to draw a draft for seventeen hundred pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London, and consequently that said draft would be paid; that the said E. Curtice & Company were bankers; whereas, in truth and in fact, as he, the said Collins, then and there, well knew, he, the said Collins, was not then and there a wealthy man, but on the contrary was a bankrupt; that he was not and never had been a partner in the firm of William Collins Sons & Company; that

he was not a Colonel in the Howe Battalion of the Royal Naval Division and was not then and there on six months' leave; that he, the said Collins, had no right to draw a draft for two thousand
159 pounds or for any amount on said Messrs. E. Curtice & Company, and said Collins then and there well knew said draft would not be paid; that the said E. Curtice & Company were not bankers;

That by means of said false, fraudulent and felonious pretenses, said Collins then and there obtained from said Mahomed Ali Zaimal Ali Raza one pearl button of the price and value of seventeen hundred pounds, of the property and goods of the said Mahomed Ali Zaimal Ali Raza, which said pretences were to the knowledge of said Collins at the time of making same, false and fraudulent; and affiant further says that the said Collins is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further states that the source of his information and belief, upon which information and belief this affidavit is based, is as follows:

The evidence taken on said charge in the Chief Presidency Magistrate's Court, at Bombay, India, duly certified according to the provisions of Section 5271 of the Revised Statutes of the United States; the evidence taken before Sir John Dickinson, Knight, Bow Street Police Court, London, and the evidence taken before Alexander Duff Thompson, at Glasgow, salaried Sheriff of the Sheriffdom of Lanarkshire, duly certified according to the provisions of Section 5271 of the Revised Stat-es of the United States. (Signed) T. F. Carlisle.

Sworn to and subscribed before me this 8 day of November, 1918. (Signed) Rufus E. Foster, Judge.

Certificate.

Calcutta, India, April 8th, 1918.

I, James A. Smith, Consul-General for the United States in Calcutta, hereby certify that the annexed papers being (1) a warrant of arrest, and (2) copies of prima facie proceedings in the court of the Chief Presidency Magistrate, Bombay, proposed to be used upon an application for the extradiction from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretenses alleged to have been committed in Bombay, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunal of British India, as required by the Act of Congress of August 3rd, 1882. (Signed) Jas. A. Smith, Consul General of the United States of America at Calcutta, India. [Seal.]

Certificate.

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Lieuten-
160 ant Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretenses, committed in British India, I hereby certify that, to the best of my knowledge and belief, the signatures "A. H. S. Aston" on the warrant of arrest, and on the information and depositions on which was granted, are the signatures of Arthur Henry Southcote Aston, a Magistrate in British India, having authority to issue and receive the same, and I further certify that such documents so signed by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Secretary to Government and sealed with his official seal, would be received in evidence for similar purposes in the Tribunals of British India. (Signed) A. H. Grant, Secretary to the Government of India in the Foreign and Political Department. [Seal.] Simla, the 2nd April, 1918.

Case No. 1463/P. of 1917.

No. 1463/P. of 1917.

To Arthur Fuller, Inspector of the Bombay City Police Force, Bombay:

Whereas one Lt. Col. Charles Glen Collins stands charged with the offence of obtaining property by false pretences at Bombay under section 420 of the Indian Penal Code in respect of a pearl button valued at £1700 the property of Mahomed Alli Zaimal Ali Raza.

You are hereby directed to arrest the said Lt. Col. Charles Glen Collins and to produce him at the Chief Presidency Magistrate's Court at Bombay or before such Presidency Magistrate as may then be present.

Herein fail not.

Dated this 1st day of December, 1917. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

In the Court of the Chief Presidency Magistrate, Bombay.

In re Mahomed Ali Zaimal Ali Raza, Complainant,

vs.

Lt. Col. Charles Glen Collin, Accused.

Charge: Cheating, Sec. 420, I. P. C.

I the undersigned being Chief Presidency Magistrate of Bombay hereby certify that the typed matter contained in the forego-
161 ing 17 pages of paper is a true copy of the depositions of Mahomedali Zaimal Ali Raza, Kaikhushru Dadabhoy Rus-

tomji Dady, Brijmohaklal Lalla Ramkisondas and John Mathew Perreira sworn and taken before me on the 1st day of December, 1917 and of the list of Exhibits and of Exhibits thereto marked A. B, C, D, E, F, and XI and of my certificate.

Given under my hand and the seal of the Court this First day of December, 1917. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

Case No. 1463/P of 1917.

Exhibit No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Mahomedali	Father's name Zainali Ali Raza
Religion Mahomedan	Caste Arab
Age about 38	Occupation Pearl and Grain Merchant
Residence Sitaram Gully	District Hornby Road

Examination-in-chief:

I know Mr. Dady. In January 1917 he came to me and gave me certain information. In consequence of it I accompanied him to Malabar Hill. I saw Lt. Col. Collins and Mrs. Olga Olson. I took pearls with me. I showed accused a bunch of pearls. He selected some pearls. I had them made up. I think there was some conversation about giving credit at the first interview but I am not quite sure. After the necklace was made up I went to Col. Collins again. Mr. Dady was present, Mrs. Olga Olsan was present and Col. Collins and Mrs. Muntz. Col. Collins was speaking with me through Mr. Dady because I don't know English properly. I understood that Col. Collins was a big man and very wealthy and partner of Messrs. Collins and Sons. He also gave me a diary saying it was the diary of their office. This is like the diary he gave me marked X for identification. He said he had many shares worth thousands of pounds. He told me Mrs. Olsan was very wealthy. He produced a letter purporting to show that Mrs. Olsan had £14,000 to her credit at a London Bank. He took Mr. Dady aside and spoke about payment. I thought Mr. Dady was a big man also and I believed the representations made to me and agreed to give the pearls on credit. Col. Collins chose a pearl button for himself from me. He saw the pearl button from the beginning and liked it. He said he would come back and purchase it after he had visited his Rajah friends.

162 On February 26th I went to see him again — Malabar Hill. He took the pearl from me that day. He asked me to give that for credit also. It was a pearl of 52 Chavs and 38¾ cents 8 carats 93 cents. I sold it for £1,700. He gave me a cheque for the

pearl. I promised not to present it for 70 days until the 5th May. I paid in the cheque to the International Banking Corporation for collection. The cheque has been sent to London. I received this letter from the International Banking Corporation Ex. A. The cheque was drawn on Messrs. C. Curtice and Company 8 Clarges Street London.

If I had known accused was an undischarged bankrupt I would not have accepted the cheque. I believed accused's representations that he was a partner in William Collins and Sons. If I had known C. Curtice and Company was a boarding house and not a Bank I would not have accepted the cheque. Nothing has been paid to me.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Kaikhushroo	Father's name Dadabhoy Rustomji Dady
Religion Zoroastrian	Caste Parsi
Age about 35	Occupation Commission Agent
Residence Waterloo Mansions	District ——

Examination-in-chief:

I know complainant. I know Col. Collins. A friend of mine Mr. Furdunji came to me and told me that a friend of his Col. Collins wanted to buy some pearls and wished me to call on him. He gave me a letter of introduction to Col. Collins. I went there about the end of January or beginning of February 1917. I went to the Bungalow at 8 Harkness Road Malabar Hill. I saw Col. Collins, Mrs. Olsan and Mrs. Muntz. Col. Collins introduced me to the ladies. Col. Collins talked about buying pearls for a pearl necklace. I said I know a party who had a very large stock of pearls. Col. Collins said he wished to buy pearls up to £6,000. I called on complainant after that. Next day we both went to Col. Collins' bungalow. Mrs. Muntz was not present. Mrs. Olsan and Col. Collins were there. Mrs. Olsan selected a string of pearls out of a large mass of pearls shown to her. She wanted the complainant to make them up into a necklace. At this particular time after complainant had gone downstairs accused broached the subject of credit. I told him
163 I would ask the complainant and let him know. I mentioned the matter to complainant in the motor on the way back. Complainant asked me to make enquiries and let him know whether he was a desirable person to whom to give credit. I consulted Mr. Furdunji. He gave me certain information. After that we went to Col. Collins with the necklace and some other pearls. Both ladies were present and Col. Collins *Col. Collins* showed us a necklace

which Mrs. Muntz had on. Col. Collins liked a button which complainant had. It was subsequently sold to Col. Collins for £1,700—. During the negotiations Col. Collins gave us 2 diaries one for complainant and one to myself. Shown X and another diary. These are — they put in Ex. B and Ex. C. Accused wrote in the diaries. He said William Collins and Sons was his firm, that he held a considerable number of shares, that he was a partner in the firm, that he was on 6 months' leave and would not take an active part in the business. This took place on the 26th February. Accused gave a demand draft to complainant asking him to present it 2 months later. So far as I know it has not been realised. The accused Col. Collins seemed a tall man, square jawed, with fair hair. I think his eyes were grey. I seldom saw him smile. He seemed to have a very serious face. He was clean shaven. He used to walk quite straight. He was dressed well but not showily. He appeared to me to dress rather quietly. He has a long face and square jaw.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

Exhibit No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Brijmohanlal.	Father's name Lala Ramkisondas.
Religion Hindoo.	Caste Khatri.
Age about 25.	Occupation Jeweller.
Residence Calcutta.	District ——.

Examination-in-chief:

I am a complainant in another case against Col. Collins. I had correspondence with friends in London regarding the accused. I had enquiries made. My friend Mr. Harry Morsar wrote me this letter Ex. E enclosing this report Ex. F. The letter bears Mr. Harry Mosar's signature. I know it.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

164 EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is John Mathew.	Father's name Parreira.
Religion Christian.	Caste ——.
Age about 50.	Occupation Assistant International Corporation, Bombay.
Residence Mazagaon.	District ——.

Examination-in-chief:

On the 27th February 1917 I received a draft for £1,700 on Messrs. G. Curtice and Company signed by C. G. Collins for collection. I produce a certified copy of the entry in the ledger marked XI. The draft is lying unpaid at our London House.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

List of Exhibits in Case No. 1463/P. of 1917.

X. Diary of Complainant's Haji Abdulla Ali Raza.
A. Letter from International Banking Corporation dated 10th May 1917 to complainant.
B. Name of the Colonel in the diary.
C. Name of Mrs. Olga Olsan.
D. Name in 2nd Diary written by the Colonel.
E. Letter.
F. Report.
XI. Certified copy of the entry in the ledger.

(Sd.) P. David, Judicial Clerk, Chief Presidency Magistrate's Court, Bombay.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

165 Ex. A.

International Banking Corporation.

Bombay, 10th May, 1917.

Haji Abdulla Aliraza, Esquire, Bombay.

C. G. Collins Bill on G. Curtice & Co. £1700 Our No. B. C. 17/211.

DEAR SIR: We have received cable advice from our London Manager stating that the above is unpaid. The reason given for dishonour is "no funds."

Please instruct us and hand us Rs. 73/12/ as under at your earliest convenience:

¼% Commission on £1700.....	Rs. 63-12-0
Cost of London cable.....	Rs. 10- 0-0
	Rs. 73-12-0

Any further charges in this connection will be received from you on receipt of advice from London. Yours faithfully, (Sd.) ——, Manager.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

Ex. B.

Lieut. Colonel C. G. Collins,
Charles G. Collins,
C. M. G.,
c/o Messrs. Wm. Collins Sons and Co., Ltd.,
Glasgow, Scotland.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

166

Ex. C.

Mrs. Olga Olsen,
3 Bryanston Square,
London, W.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

Ex. D.

Lieut. Col. C. G. Collins,
Charles G. Collins,
C. M. G.,
c/o Messrs. Wm. Collins Sons and Co., Ltd.,
Glasgow, Scotland.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

Ex. E.

Harry Morser.

37 Hatton Gardens,

London, 28th September, 1917.

Mr. Ganeshi Lali, Agra.

My Dear Friends: I beg to acknowledge receipt of your esteemed letters and different cables and confirm my different cables which no doubt you have received. I had to postpone writing to you fully until such date when I should be in a position to give you full information regarding Collins. If you have not heard from me at once in answer to your cables, please do not think for one moment that I have neglected the matter but I simply did not care to telegraph unless I had definite news. I also had the visit to Messrs. Sanderson's Solicitors whom I have given every information and assistance that I could. I personally did my very best to find out all I could about this man, but when I saw that such channels as I should be compelled to use were close- to me I considered it in your own interest to employ a private detective who has far more facilities than I have. I found this man in Mr. Brewster Kemp who has been 35 years with Scotland Yard, I arranged with him the fee and his investigations are embodied in the enclosed report a copy
167 of which I have given to your solicitors. I am extremely sorry that you have been the victim of a swindler, and up to the time of writing it has been impossible to find out where Collins is. Mr. Kemp is now working hand in hand with your Solicitors and you may rest assured that everything is being done and watched by me in your interest. My opinion is that when Parliament is sitting again to approach his brother who may settle the matter. At present the whereabouts of his brother are unknown, but he is sure to come to London when Parliament opens. I am enclosing herewith a statement of my expenses, and I should be very glad if you will kindly remit same. I trust and pray that you may be spared this heavy loss and you can rest assured that everything is being done in your interest. I hope you are enjoying excellent health.

With kindest regards from my family to you and yours,
I am always, Yours sincere friend, (Sd.) Harry Morser.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

Ex. F.

Private and Confidential.

The Holborn Stadium.

35 High Holborn, W. C. 1,

13th September, 1917.

Re Charles Glen Collins.

Henry Morser, Esquire, 37 Hatton Garden, E. C. 1.

DEAR SIR: I have to report that, acting upon your verbally conveyed instructions, having made inquiries respecting the above man, the information I have been able to obtain so far is as follows:

He is a member of the family of William Collins Sons and Company, Publishers and Stationers, who carry on business in Glasgow, London and Australia, but he is in no way connected with the business. He is one of four brothers, two of whom, Godfrey and William, are Directors of the firm in question.

He formerly obtained a commission in the Gordon Highlanders and served with distinction in the Boer War. He subsequently went to the United States, where he married a Miss Wheeler, daughter of Mr. Wheeler, a member of a famous sewing machine manufaacturing firm.

At the outbreak of war with Germany, he joined the Naval Brigade and was appointed to the Command of the Howe Bat-
168 talion, and served during the Gallipoli campaign; he evidentually returned to London and lived at various addresses.

The address: 51 South Street, Park Lane, is a large block of residential flats. He has never lived there; he occasionally visited a Mr. and Mrs. Muntz, Mr. Muntz is believed to have served with Collins as a brother-officer in the Gallipoli Campaign. He divorced his wife and Collins was cited as the co-respondent.

Collins and Mrs. Muntz suddently left the country together and went to Colombo, thence to Bombay; later to New York and they were recently heard of in Norway. It is believed that Mrs. Muntz has been working with him in India, contracting these debts.

Charles Glen Collins was adjudicated a bankrupt in this country on the 19th August 1904, with heavy liabilities. A second petition in bankruptcy was filed against him in 1916, but he did not surrender to his examination.

On the 16th March 1912 he was arrested for obtaining money by means of worthless cheques at the Victoria Hotel, Sligo, but the charge was subsequently withdrawn and it is supposed the matter was setttled by his friends.

He is also believed to have obtained money by means of worthless cheques in Vienna.

One of his brothers is Major Godfrey Patterson Collins, former Secretary to Colonel Seely, and now private secretary to Mr. Gulland, M. P., who is a Liberal Whip to the present Government.

I am informed that Mrs. Collins is about to divorce her husband in New York.

Mrs. Muntz is the daughter of a Mr. Benn, a very rich iron founder and I am seeking an early interview with him and also with Major Godfrey Collins, with a view to obtaining, if possible, the present address of Charles Glen Collins and possibly a settlement of this account or some security for it.

I understand that the Official Receiver recently obtained possession of some shares left to Collins under his grandfather's will and these have been disposed of for the benefit of the Creditors.

I have interviewed Mr. Edward Cutrice of 8 Clarges Street, Piccadilly, who has furnished flats at this address; he also has the Curzon Hotel, Broadstairs, and the Philbeach Private Hotel, Kensington. He informed me that he has known the Collins family for many years, especially Charles Glen Collins. The last he heard of Collins was from Bombay, when he, Collins, informed him that he proposed purchasing certain Oil properties in South America; later he sent word by a friend (unknown to Curtice) that he was forwarding to Curtice a sum of £11000 to cover certain liabilities contracted. This money, however, has not yet arrived, but Curtice states that he is expecting to hear from Collins in the near future, and has promised to acquaint me at once should he hear.

Mr. Curtice states that he was not aware that the Bill had been drawn on him until someone called to collect it.

I am pursuing the inquiry with a view to learning the
169 present whereabouts of Collins and I hope to be able to obtain this information very shortly when a further report will be submitted.

I am, dear sir, Yours obediently, (Sd.) William H. Kemp.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. [Seal.]

XI.

Memorandum.

From the International Banking Corporation.

Bombay, 1st December, 1917.

To the Police Court, Esplanade, Bombay:

We hereby certify that we received for collection on 27th February 1917, from Mohomedally Zainal Aliraza, a bill drawn by C. G. Collins on G. Curtice and Co. 8 Clarges Street, London W. for £1700 (Pounds one thousand seven hundred).

The bill is at present held by our London office unpaid. International Banking Corporation, (Sd.) —— ——, Manager.

True copy. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

Chief Presidency Magistrate's Court.

Bombay, 1st December, 1917.

I, A. H. S. Aston, Esquire, Chief Presidency Magistrate of Bombay, do hereby certify that a prima facie case of an offense of obtaining property by false pretences at Bombay under section 420 of the Indian Penal Code in respect of a pearl button valued at £1700 has been established against the accused Lieut. Col. Charles Glen Collins and that the alleged act constitutes under the law in force in the Bombay Presidency an offence punishable under the Indian Penal Code with imprisonment of either description (rigorous or simple) for seven years and a fine.

Given under my hand and the seal of the Court this 1st day of December, 1917. (Signed) A. H. S. Aston, Chief Presidency Magistrate, Bombay. E. J. M. [Seal.]

170 United States District Court, Eastern District of Louisiana.

No. 15936.

In the Matter of Extradition Proceedings of CHARLES GLEN COLLINS.

Proceedings Had in the Above Entitled and Numbered Matter on the 21st Day of November, 1918, Before the Honorable Rufus E. Foster, Judge United States District Court, Eastern District of Louisiana.

Appearances:

Judge R. H. Marr, representing petitioner.
J. Zack Spearing, Esq., representing defendant.

Offer.

Judge Marr: I offer all the documents connected with the affidavit of T. F. Carlisle, all certified copies of the proceedings held in the Court of the Chief Presidency Magistrate, Bombay, with all the certificates thereto attached. I offer in evidence also the testimony taken before Sir John Dickinson, Knight, in London, and the evidence in Glasgow before Alexander Stuart Duff Thomson.

Judge Marr: Then of course I presume the admission that Mr. Collins is the person described in the affidavit.

Mr. Spearing: Yes.

Objection.

Mr. Spearing: I object to the reception of any of the documents, papers, certificates, or copies that have been offered in evidence, on

the ground that they do not relate to, and do not show, a charge against the accused for an offence covered by any treaty between the Government of Great Britain and the United States, and they do not charge any offence which, under any treaty between those two governments, is extraditible, and the papers offered in evidence relate to an offence entirely separate, different and distinct from the offence charged in the affidavit filed in this Court.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

Objection.

Mr. Spearing: Reserving the benefit of the objection made to the admission of any of the papers and documents in evidence, I make the following objection: First, that the certificates are not in proper form and that the certificate of A. H. S. Aston, Chief Presidency Magistrate, of Bombay, dated December 1st, 1917, refers to typed matter contained in the foregoing 17 pages of paper, whereas,
171 in truth and in fact, there are not 17 pages, and he does not refer to the papers which follow the certificate.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

Objection.

Mr. Spearing: I object to any of the other papers and documents, because the papers from India do not contain any warrant of arrest, and on the further ground that such papers as are further offered relate to the charge of cheating, whereas the affidavit filed in this court by the Honorable T. E. Carlisle, British Consul General at New Orleans, refers to the charge of obtaining valuable property or goods under false pretences; that the charge of cheating is not extraditible under the treaty between the Government of Great Britain and the Government of the United States.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

Objection.

Mr. Spearing: I object to the affidavits taken in Glasgow and London, being the evidence of John Richard Campbell Howie, Edward Curtice and others, James Paterson, Hugh Allan and A. S. D. Thomson, on the ground that they were taken after the charges were made in Bombay, India, and form no part of the proceedings in Bombay, India, and that the papers were not part of the papers or documents upon which the charge against this accused was made, or on which the warrant of arrest, if any was issued, was based.

The Court: I sustain the objection.

Objection.

Mr. Spearing: I further object to the affidavit of A. H. S. Aston, dated December 1st, 1917, he being the Presidency Magistrate of Bombay, in which he states his conclusion, on the ground that it is no part of the proceedings and is not binding upon this Court.

The Court: I sustain the objection.

Mr. Spearing: I now offer Charles Glen Collins as a witness.

The Court: There is a little difference in these affidavits, in both of these affidavits there is some mention that Collins made some arrangement of credit. I will let him explain that, if he wants to.

CHARLES GLEN COLLINS, being duly sworn, testified as follows:

Direct examination.

By Mr. Spearing:

Q. Colonel Collins, we are now on the charges of Ali Raza, of Bombay, India. Mr. Ali Raza, in his examination in chief
172 before Mr. Aston, Chief Presidency Magistrate, in Bombay, states that he knew a Mr. Dady, and that he, Ali Raza, went out to see you at Malabar Hill.

A. That is correct.

Q. Do you remember the circumstances?

A. Yes sir; quite well.

Q. Among other things, he says he saw you and Mrs. Olga Olsan, and he took pearls with him.

A. We bought a pearl necklace and a single pearl from him, and paid him £3000 in cash and gave him notes for the balance.

Q. He refers to a conversation with reference to giving credit.

A. Yes sir.

Q. What was that conversation?

A. Well, I told him, as I told all those parties whom I saw, that I had been commanding the Howe Battalion and that I was on sick leave——

Q. I understand the Judge does not want you to testify to anything of that kind.

The Court: I don't object.

A. I mean it was on those points that he gave me credit.

Q. You say you told him you had been a colonel in the Howe Battalion?

A. Yes sir, and that I was on sick leave, and that I was a brother of the chairman of a firm of publishers and stationers in Scotland and London.

Q. What was the name of that firm?

A. William Collins and Sons, Limited.

Q. Is that a firm or a corporation?t

A. A corporation.

Q. What request, if any, did you make for credit?

A. The only credit I wanted was, I said I couldn't pay more than half in cash and half in notes; was that agreeable to him?

Q. Did that refer to the transaction of the pearl necklace as well as to the pearl that is referred to in these affidavits?

A. It took place simultaneously, took place at the same table, in the same room.

Q. Who purchased the pearl necklace?

A. You see, I was acting——

The Court: There is nothing about a pearl necklace in this case, is there; it is only a pearl button, is it not?

Mr. Spearing: No sir; but that I think is necessary in explaining the credit portion of it, because, as the witness has just stated, the two transactions were simultaneous and at the same table.

Q. Who purchased the pearl necklace?

A. I arranged all of these purchases for these ladies.

Q. Who was with you at that time?

A. All the same party; Mrs. Olsan, Mrs. Muntz and myself, and numerous other people.

Q. Who got the pearl necklace?

A. Mrs. Olsan.

173 Q. And you got the single pearl?

A. I didn't get it; Mrs. Olsan, she wore it, she had it mounted.

Q. You gave Ali Raza a check or draft on Curtice & Co.?

A. £1,700, and, to the best of my recollection, a check on the London, County and Westminster Bank for £3,150.

Q. Was that on account of the whole transaction?

A. Yes sir; I will say, a note of Mrs. Olsan on her—I can't say if that was or was not made on her father's firm of bankers in London, or on the same London, County & Westminster Bank.

Q. Was there a lump sum agreed upon for all of the jewelry purchased at that time?

A. Absolutely.

Q. What was said with reference to the time of the presentation of the draft or check or note?

A. I explained to them my oil deal. I showed them the film of the oil in Houston, and they agreed to wait until we got our money from the oil deal.

Q. Did you explain that situation to them?

A. I explained it at very great length, on very many occasions.

By the Court:

Q. That was with regard to the notes?

A. That was about the note; I couldn't pay them the whole sum in cash.

Q. There was no agreement about the checks you gave?

A. The time I gave those——

Q. You drew a check on a certain designated firm. At that time did you have any money on deposit with that firm?

A. No, sir.
Q. Did they agree at that time to pay your checks?
A. They always did so in the past.
Q. Did they make any agreement with regard to these checks?
A. No sir; I explained I didn't have the money at that time.

By Mr. Spearing:

Q. This explanation you made to them, did that refer only to the note that was given, or did it refer to both the notes and the draft on Curtice & Co.?
A. It had reference to everything.
Q. What was the understanding or agreement between you and this party with reference to the time of the presentation of the draft on Curtice?
A. Well, it is called a check, of course, it is a draft like the others. I told them I received my money by a certain date in April, April 10, and I arranged all these drafts would come at that time in London, about a fortnight after, and I arranged for the money by cable in Shanghai to meet these drafts when they become due.
Q. Did you get the jewelry or the pearls before or after that understanding was made?
A. Afterwards.

174 Cross-examination.

By Judge Marr:

Q. What business is E. Curtis engaged in Clargis Street, London?
A. Mr. Curtice is the owner of a number of hotels and boarding houses. He is a financial man in this degree. He was associated with me many times in the past in business deals.
Q. He is not in the banking business at all?
A. He never has been.
Q. You didn't notify Curtice in London that you had any intention to draw on his for that amount?
A. I wrote him at once from India; sent him some money.
Q. And before you got any answer from him authorizing you to draw any drafts——
A. I often drew drafts on him for the last twelve years.
Q. You had no authorization from him to draw this special draft of £1,700 had you?
A. There was no need for a special authorization for drawing drafts; I always had done so.
Q. At the time you drew this draft, I understand you had no funds whatever in his hands for collection?
A. When you say that, there is information in the District Attorney's office, among the papers seized, showing how much money he had of mine, acknowledging receipt or dispatch of the money to Curtice.

Q. The evidence which purports to have been taken in London of Edward Curtice says: "I have had no communication whatever with Collins in regard to the drafts for £5,000 or £1,700."

Objection.

Mr. Spearing: I think it is necessary for me to make formal objection to this testimony on the ground of irrelevancy.

The Court: I sustain the objection.

Q. But you do admit that you had no formal authorization from Curtice & Co. for drawing a draft on them?

A. I never have had.

Q. You also admit that you had no money in their hands at the time this draft was drawn?

A. If you send up to the District Attorney's office, you will find among the papers——

By the Court:

Q. Just answer the question.

A. I don't know until I see the dates. In my opinion, I had.

Q. You never paid these drafts?

A. No sir; I have not had much of a chance.

175 Q. You never remitted anything to Curtice & Co. to take up these special drafts?

A. No sir; I have not had enough money to do that.

Q. Did you tell these people that you were a member of the corporation of William Collins & Sons?

A. No sir.

By Judge Marr:

Q. Your statement is that these people extended credit to you other than that of those drafts. What did you say to them that would lead them to believe you were capable of paying that amount of money?

A. Because I paid them £3,000 in cash, $15,000 in cash.

Q. Didn't you draw a draft for £5,000 about that same time on Curtice & Co.?

A. Yes sir; that pearl necklace cost £4,000.

Q. And that also was paid?

A. Yes sir.

Q. So that you drew drafts aggregating £6,700 on a firm that you had absolutely no money with, and from whom you had no written authority to draw drafts on?

A. Well, I always drew drafts on them, they had been met, in the past.

Q. But you had no authority from them to draw any drafts upon them; they didn't tell you "You may draw on us up to the extent of £6,700 from India and we will pay those drafts"?

A. Not until he received my moneys.

Q. Didn't you tell these people that you were a member of the firm of Collins & Co.?

A. Never.

Q. You never told them anything of that sort?

A. Of that sort? I told them what I have told you.

Q. Didn't you tell them you had a large amount of railroad shares and that you were a large holder of shares of stock, and that you were amply able to meet any indebtedness you might owe?

A. I have had a lot of railroad shares.

Q. Did you have them at that time?

A. Mortgaged.

Q. Is it not a fact that very time when you were giving these drafts in India, that proceedings were taken against you in Great Britain as a bankrupt?

A. I don't know it and have never heard of it since. It was after I left England that you make that statement.

Q. You are, at this present moment, are you not, at this present moment, an undischarged bankrupt, by proceedings instituted against you in 1902?

A. To the best of my knowledge, no.

Q. You don't mean to testify you are a discharged bankrupt, do you?

A. I have never been put in bankruptcy in my life.

176 Q. You never were, prior to this suit?

A. I never have been in bankruptcy, except in the United States. There was a petition against me in 1902.

Q. How many times have you been proceeded against with regard to a discharge in bankruptcy?

A. To the best of my knowledge, only once, in 1902.

Q. You had no previous acquaintances with these people before you had these jewelry transactions, this man Ali Raza?

A. Never.

Q. You never knew him before at all?

A. No sir.

Q. And you did get, on the presentation of this draft for £1,700, this pearl button——

A. And the £3,000 in cash.

Q. You didn't pay them £3,000 in cash for the pearl button?

A. No; but it was given for the two transactions.

Q. You did buy from these people a pearl button of the value of £1,700?

A. Yes, sir.

Q. And you gave in payment for that pearl button a draft drawn on these people in London for £1,700. Was not the amount of the draft equal to the purchase price of the button?

A. It was.

By the Court:

Q. I understood you to say that you told him you were an officer in the English army on sick leave?

A. Yes sir.
Q. Was that true?
A. Yes sir.
Q. Are you an officer in the English army now?
A. No sir.
Q. When was your connection with it closed?
A. January 1916, from the Admiralty, when I was discharged from the Royal Marines.
Q. What was your commission?
A. Lieutenant Colonel of the Royal Marines.
Q. When were you discharged?
A. I never was discharged; I resigned my appointment in the Royal Marines and went on to my regiment in London, in January 1916, on account of ill health.
Q. Was it before or after you went to India?
A. Before.
Q. So, at the time you made these purchases, you had already resigned?
A. Yes sir; but I was being employed. You see I was used by the Department as a — and when the regiment was transferred, my health broke down, I had to resign my appointment so as to get back to my real profession in the War Office, in the army, where I had been employed before at the beginning of the war.

177 By Judge Marr:

Q. I show you what purports to be a passport issued at the office in London on the 8th day of January 1916.
A. Quite correct.
Q. I notice that in that passport you give your age as 36 and profession as that of banker?
A. Yes sir.
Q. You didn't give your progession as being in the army, did you?
A. I was not allowed by the Admiralty. Any officer of the army or navy crossing the North seas had to go disguised because in case of submarines capturing these neutral vessels.
Q. Where did you conduct your banking business?
A. In New York chiefly.

By the Court:

Q. You resigned your commission?
A. My appointment; you can't resign your commission in war time.
Q. You had resigned your appointment?
A. Under the admiralty.
Q. What was your official standing in the British Admiralty or army?
A. Commander of the Howe Battalion.
Q. Not after you had resigned your appointment?
A. No sir.

Q. What was your understanding after you had resigned your appointment?

A. I was simply sent back to my lower rank, as captain in the army, where I had been when I came to the War Office.

Q. Do you still hold your position as captain in the army?

A. No sir, I have no commission, because, at the end of six months, you are automatically dropped. I lost the appointment as colonel of the army in Canada last year. There I held the rank of colonel, general staff officer at Alcarte.

By Judge Marr:

Q. When you came to New Orleans in November 1917, you were then out of the army?

A. Yes sir; I had a sick leave certificate from Quebec.

Q. I say, when you came to New Orleans in November 1917, had you not ceased being an officer in the British Army?

A. No sir; the letters will disprove that, the letters Mr. Spearing has from the general officer commanding in Canada, from the Adjutant General of the Canadian forces, dated October 17, that will disprove that.

Q. In October 1917?

A. Yes sir; that is three weeks before I came here.

Q. Three weeks before you came here, you were no longer in the army?

178 A. No; I went before the medical board in Quebec, I think it was the 1st of October, that is the date of the certificate, and they wouldn't let me go back in active service for six months.

Q. You came to New Orleans in November 1917?

A. Yes sir.

Q. Hadn't your connection with the British Army ceased when you came to New Orleans?

A. No; the doctors would pass me as *git* now.

Q. I want an answer, yes or no; isn't it a fact when you came to New Orleans in 1917, your connection with the British Army had come to an end?

A. No sir.

Q. What was your rank in the British Army at that time?

A. Lieutenant Colonel.

Q. So, when you presented yourself at the British Consulate here in November 1917, you were still a colonel in the British Army?

A. Yes sir; on sick leave.

Q. On six months' sick leave?

A. Yes sir; from the medical board at Quebec.

By Mr. Spearing:

Q. Will you please explain in detail how it was that when you got that passport about which you were asked, you did not give your rank either in the army or in the navy?

A. I applied for permission from the admiralty to go to New York to recover my health, after I was discharged as semi-fit by the medical

officers of the Royal Navy Hospital at Plymouth. They sent for me and told me I could leave for three months, but I must not, in crossing the North Sea, take any papers of any kind at all with me, in case of capture by German submarines. That rule applied to all naval officers crossing the North Sea at that time. For that reason, they gave me this passport, and they made it out to me as a banker, because I told them that was my profession before the war.

Q. You did go to New York?

A. Yes sir; and then I was used immediately afterwards in carrying dispatches for the British Embassy from Petrograd to Vladivostok. That was what took me out to the Far East.

Q. That was after you got your passport?

A. Yes sir.

Q. Did you actually carry those dispatches?

A. Yes sir.

Q. You have a receipt from the British Embassy at Tokio for them?

A. Yes sir.

Q. That was one of the motives you had in going to the Far East?

A. Yes sir.

Q. Will you explain just your connection, either by blood or in a business way, with the corporation of William Collins & Sons, Limited. First, is that a family business?

179 A. That is a family business. My great-grandfather founded it and my brother is the present chairman.

Q. Did your father have any connection with it?

A. He was a director and shareholder.

Q. Did he ever have any stock in it?

A. Yes sir, and he left it in trust for his children, the same as my grandfather, Sir William Collins, he left it to my brothers and my sister and myself, a great many shares, all in trust.

Q. What has become of your interest in that concern?

A. The banks in Glasgow have loaned *sum* large sums against my shares. The firm has been obliged to reduce the dividends during the war, and at the present time I am receiving no income from my shares held by the trustees.

Q. Did you ever receive any dividends from William Collins and Sons?

A. Of course.

Q. Up to what time?

A. The trustees have been paying me moneys continuously from 1904 to 1914, when I went back to the War Office and rejoined in August.

Q. So far as your military record is concerned, I understand that before the present war broke out, you were connected with the army?

A. An officer for eight years in the Cameron Highlanders. I resigned my place in 1904, with the rank of captain.

Q. When the present war broke out, what part of the service did you go into?

A. I reported in the War Office, and was employed in the War Office for about thirty days with the rank of captain. I was then transferred to the Admiralty with the rank of commander, as second in command of one of the regiments of the Royal Naval Division, and later I was promoted, I was transferred from the Royal Navy to the Howe Battalion, with the rank of Lieutenant Colonel.

Q. And you served in that capacity?

A. Until June 1916, or over a year and a half, I was in the Howe Battalion.

Q. And you have not been in actual service since June 1916?

A. Not in the field, but in Canada; I was carrying these dispatches.

Q. When you came to this country, you went to Canada?

A. I reported myself to the military attaches, and shortly after I was instructed to go to Quebec and to report for duty there as instructor, as military instructor.

Q. As a matter of fact, did you report for duty?

A. Yes, sir.

Q. In what capacity and at what place?

A. Lieutenant Colonel.

Q. And at what place?

A. At Alcarte Camp, Alcarte, Quebec.

Q. How long did you serve there?

A. Three months.

180 Mr. Spearing: Your Honor, I would like to offer the testimony of Mr. William H. Smith, as I did in the other case.

The Court: I will hold that the testimony of Mr. Smith, which I understand can only corroborate the Colonel as to his oil transactions in the United States, from which he expected to derive funds to pay for these jewels that he purchased, is irrelevant and inadmissible, just the same as the Colonel's testimony on that line, I have permitted the defendant to testify in order that he might explain, if he so desired, the ambiguous statement in the affidavits on which the requisition issued, that there had been a discussion about credit when the jewels were bought.

Mr. Spearing: I now offer Colonel Collins as a witness to prove the facts which it was stated could be proved by him in the former proceedings consolidated in 15,927, and also offer Mr. William H. Smith as a witness to substantiate Colonel Collins, as stated in that statement of facts.

Offer.

Mr. Spearing: I also offer all of the documents and papers which were offered in the said proceedings 15,927, concerning the other affidavits against this same accused.

The Court: I exclude the testimony.

Mr. Spearing: To all of which I except and make this note in lieu of a formal bill of exceptions.

Mr. Spearing: I offer the transcript of the record in the proceedings 15,927, to form part of this purpose for such purpose as it may serve.

The Court: I will consolidate this case with the other two.

The Court: It is quite evident that the defendant purchased the pearl stud, or was instrumental in its purchase, for £1700, and that he gave in payment of it, a check or draft on a firm in London with whom he had no funds deposited, and against whom he was not specially authorized to draw the check. This makes out a prima facie case of obtaining goods by false pretences, whether he subsequently intended to pay for the goods in some other way or not, and the matter is one that should come before the Indian courts for trial on the merits. Therefore I will hold him for requisition from the Secretary of State.

181 **Motion of Charles Glen Collins to Dismiss.**

[Filed Nov. 21, 1918.]

U. S. District Court, Eastern District of Louisiana, New Orleans, Division.

No. 15936.

In re Extradition Proceedings of CHARLES GLEN COLLINS.

Now comes Charles G. Collins whose extradition is sought in these proceedings and moves the Court to dismiss the affidavit herein and to discharge him from custody without day because this Court is without jurisdiction to try Appearer or to hear and pass upon the questions raised by the affidavits or the rights of this Appearer on the grounds and for the reasons following, to wit:

Because the affidavit of Thomas F. Carlisle, British Consul General is not such as is required by law, does not comply with the law and did not justify the issuance of the warrant of arrest and does not justify the holding of the Appearer thereunder for the reason that

The said affidavit does not charge this Appearer with having committed any crime and particularly does not charge him with having committed a crime for which, under the treaties between this Country and Great Britain, this Appearer may be extradited.

Wherefore, this Appearer objects to and protests against this Honorable Court hearing any evidence, either oral or documentary, upon the affidavit hereinabove referred to and prays the Court to dismiss the said affidavit and to discharge this Appearer without day. (Signed) Charles G. Collins. (Signed) J. Zach. Spearing, Atty.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me the undersigned authority personally came and appeared Mr. Charles G. Collins who being duly sworn deposes and says: That all of the allegations in the above and foregoing petition are true and correct. (Signed) Charles G. Collins.

Sworn to and subscribed before me this 21st day of November 1918 at the City of New Orleans, State of Louisiana. (Signed) J. Zach Spearing, Not. Pub. [Seal.]

182 **Order of Commitment.**

[Filed Oct. 30, 1918.]

United States District Court, Eastern District of Louisiana.

Nos. 15927 & 15928 (Consolidated).

In the Matter of Extradition Proceedings versus CHARLES GLEN COLLINS.

These causes, as consolidated, came on this day to be further heard upon requisition of Gerard M. Loly, British Vice Consul at the City of New Orleans, and of Tom F. Carlisle, British Consul General at the City of New Orleans, that Charles Glen Collins be committed for the purpose of being delivered up as a fugitive from justice, pursuant to the provisions of the treaty made between the United States and Great Britain, August 9, 1842, and subsequent additional conventions—counsel for the respective parties being present, and the defendant, Charles Glen Collins, being present and represented by counsel;

Whereupon, after hearing exhibits and evidence, and arguments of counsel, and on due consideration thereof, I find and adjudge that the evidence produced against the said Charles Glen Collins is sufficient in law to justify his commitment on the charge of having obtained property by false pretenses;

It is therefore ordered, adjudged and decreed that the said Charles Glen Collins be committed to the House of Detention for the Parish of Orleans, State of Louisiana, to be held for extradition to British India for trial on the charges pending against him in the Chief Presidency Magistrate's Court at Bombay, India, and to abide the order of the President of the United States in the Premises, until the further orders of the Court. October 30th, 1918. (Signed) Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana.

Commitment.

Issued October 30, 1918.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

To the Marshal of the Eastern District of Louisiana, or Either of His Deputies, and the Keeper of Either of the Gaols in Said District, Greeting:

These are, in the name of the President of the United States of America, to command you, the said Marshal or Deputies, and
183 each of you, forthwith to convey and deliver into the custody of the Keeper of the House of Dentention for the Parish of

Orleans, State of Louisiana, the body of Charles Glen Collins, directed by order rendered this day in these proceedings, to be held for extradition to British India for trial on charges pending against him before the Chief Presidency Magistrate Court at Bombay, India, as set out in the complaining affidavits herein;

And you the said Keeper, in the name of the President of the United States of America, aforesaid, are hereby commanded to receive the said Charles Glen Collins into your custody — said House of Detention and him there safely to keep or be otherwise discharged in due course of law, until the further orders of the court.

Hereof fail not at your peril.

Witness, The Honorable Rufus E. Foster, Judge of the United States District Court, this 30th day of October in the year of our Lord one thousand nine hundred and eighteen. (Signed) Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana. [Seal.]

Marshal's Return on Commitment.

[Filed November 19, 1918.]

Received by U. S. Marshal, New Orleans, La., October 31st, 1918, and on the same day month and year, I delivered the body of the within named Chas. Glen Collins into the custody of the keeper of the house of Detention, New Orleans, La. Frank M. Miller, U. S. Marshal, (Signed) By Sam W. Taylor, Deputy.

[Endorsed:] U. S. District Court. Nos. 15,927 & 15,928 (Consolidated). In the Matter of — Charles Glen Collins. Commitment.

Order of Commitment.

[Filed Nov. 21, 1918.]

United States District Court, Eastern District of Louisiana.

No. 15936.

In the Matter of Extradition Proceedings versus CHARLES GLEN COLLINS.

This cause came on this day to be heard upon requisition of Tom F. Carlisle, British Consul General at the City of New Orleans, that Charles Glen Collins be committed for the purpose of being
184 delivered up as a fugitive from justice, pursuant to the provisions of the treaty made between the United States and Great Britain, August 9, 1842, and subsequent additional conventions;

Present: Robert H. Marr, Esq., attorney for Tom F. Carlisle, British Consul General at the City of New Orleans, Complainant;

J. Zach. Spearing, Esq., attorney for the defendant, Charles Glen Collins, and the said defendant, Charles Glen Collins, in person;

Whereupon, after hearing exhibits and evidence, and arguments of counsel, and on due consideration thereof, I find and adjudge that the evidence produced against the said Charles Glen Collins is sufficient in law to justify his commitment on the charge of having obtained property by false pretenses;

It is therefore ordered, adjudged and decreed that the said Charles Glen Collins be committed to the House of Detention for the Parish of Orleans, State of Louisiana, to be held for extradition to British India for trial on the charges pending against him in the Chief Presidency Magistrate's Court at Bombay, India, and to abide the order of the President of the United States in the premises, until the further orders of the Court.

It is further ordered by the Court that this cause be consolidated with causes Nos. 15,927 and 15,928 of the docket of this Court, entitled "In the matter of extradition proceedings versus Charles Glen Collins." (Signed) Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana. New Orleans, La., November 21st, 1918.

Commitment.

Issued November 21st, 1918.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

To the Marshal of the Eastern District of Louisiana, or Either of His Deputies, and the Keeper of Either of the Gaols in Said District, Greeting:

These are, in the name of the President of the United States of America, to command you, the said Marshal or Deputies, and each of you, forthwith to convey and deliver into the custody of the Keeper of the House of Detention for the Parish of Orleans, State of Louisiana, the body of Charles Glen Collins, directed by order rendered this day in these proceedings, to be held for extradition to British India for trial on charges pending against him before the Chief Presidency Magistrate Court at Bombay, India, as set out in the complaining affidavits herein;

185 And you the said Keeper, in the name of the President of the United States of America, aforesaid, are hereby commanded to receive the said Charles Glen Collins into your custody in said House of Detention and him there safely to keep or be otherwise discharged in due course of law, until the further orders of the court.

Hereof fail not at your peril.

Witness, The Honorable Rufus E. Foster, Judge of the United States District Court, this 21st day of November in the year of our Lord one thousand nine hundred and eighteen. (Signed) Rufus

E. Foster, Judge of the United States District Court for the Eastern District of Louisiana. [Seal.]

Marshal's Return on Commitment.

[Filed November 27, 1918.]

Received by U. S. Marshal, New Orleans, La., November 22nd, 1918. Having previously arrested the within named Charles Glen Collins, and having him in custody I take notice of this warrant and am holding him in answer to same. Frank M. Miller, U. S. Marshal, (Signed) By Sam W. Taylor, Deputy.

[Endorsed:] U. S. District Court. No. 15,936. In the Matter of Extradition Proceedings vs. Charles Glen Collins. Commitment.

Certificate of Judge.

Issued November 27, 1918.

THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

United States District Court, Eastern District of Louisiana.

Nos. 15927, 15928, and 15936 (Consolidated).

In the Matter of — CHARLES GLEN COLLINS.

I, Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana, being duly authorized to issue warrants for the extradition of fugitives from justice of foreign governments, do hereby certify that, pursuant to complaints of Gerard M. Loly, British Vice Consul at the City of New Orleans, and of Tom F. Carlisle, British Consul General at the City of New Orleans, duly made oath, charging Charles Glen Collins with having committed the crime of obtaining property by false pre-
186 tenses from Pohoomul Bros., Ganeshi, Lall & Sons and Mahomed Alli Zaimal Ali Raza, within the jurisdiction and government of British India, and with being a fugitive from justice of said country, I issued my warrants for the arrest of the said Charles Glen Collins, and by virtue thereof he was by the Marshal of the United States for said District arrested and brought before me for examination and hearing upon said charges, and that said examinations and hearings were held on the 30th day of October, A. D. 1918, and on the 21st day of November, A. D. 1918, Robert H. Marr, Esq., appearing as counsel for the British Government, and J. Zach. Spearing, Esq., appearing as counsel for the defendant, and that I deem the evidence before me sufficient to sustain the charges under the law, and the provisions of the treaty of extradition between the government of the United States and that of the British

Government, and that I have accordingly, by my warrants under my hand dated October 30th, 1918, and November 21st, 1918, committed him to the House of Detention for the Parish of Orleans, State of Louisiana, to await the order of the President of the United States in the premises.

I further certify that the annexed depositions of Udharn Partabrai, Lokumull Sahijran, John Dunstant Sherstan Baker, and Arthur Fuller, together with certificates of James A. Smith, Consul General for the United States of America, at Calcutta, India, A. H. Grant, Secretary to the Government of India in the Foreign and Political Departments, and Chunilal H. Setalvad, Acting Chief Presidency Magistrate, Bombay, India, and depositions of Brijmohanlal Lalla Ramkisondas, Dattatraya Ramchandra, Arthur Fuller, Mohomedali Zaimal Ali Raza, Kaikushru Dadabhoy Rustomji Dady and John Mathew Perreira, together with certificates of James A. Smith, Consul General for the United States of America, at Calcutta, India, A. H. Grant, Secretary to the Government of India in the Foreign and Political Departments, and A. H. S. Aston, Chief Presidency Magistrate, Bombay, India, was all of the testimony considered by me on said application;

I further annex the depositions of John Richard Campbell Howie and Edward Curtice, together with certificates of Sir John Dickinson, Knight, Chief Magistrate of the Police Courts of Metropolis (London), J. W. Holderness, Under Secretary of State for India, and Sheldon Leavitt Crosby, Secretary of Embassy of United States, and deposition of James Paterson and Hugh Allan, together with certificates of J. W. Holderness, Under Secretary of the State of India, Sheldon Leavitt Crosby, Secretary to Embassy of United States, John Lamb, Assistant Under Secretary for Scotland, and A. Hirtzel, Assistant Under Secretary of State for India, which on objections of counsel for said Charles Glen Collins, I excluded.

I further annex a statement of counsel for Charles Glen Collins of certain facts he proposed to show by said Collins in his own behalf and by Wm. H. Smith, in behalf of said Collins (see accompanying record of proceedings in Court on October 30th, 1918, and November 21st, 1918), which evidence I considered to be matters of defence before the India Court and not relevant or admissable before me.

187 Witness my hand this 27 day of November, A. D. 1918.
(Signed) Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana. [Seal.]

Judgment.

[Filed Feb. 21, 1919.]

In the United States District Court for the Eastern District of Louisiana.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

As to the commitment of relator to await the action of the President of the United States on the application for the extradition of relator to answer the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza, relator's application for habeas corpus is denied.

As to the commitment based on the charge of obtaining property by false pretenses from Pohoomull Brothers and on the charge of obtaining property by false pretenses from Ganeshi Lall & Sons, the writs of habeas corpus are granted, but relator is remanded to the House of Detention to await further proceedings in said last two named affidavits,

And it is further ordered that, as to the said two affidavits last mentioned, this cause be and is hereby remanded to the Honorable Rufus E. Foster, Judge, to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana.

Given this 21st day of February, 1919. (Signed) W. I. Grubb, U. S. District Judge.

EXHIBIT.

[Filed March 6, 1919.]

Before Saml. M. Hitchcock, U. S. Commissioner, &c.

In the Matter of the Application for the Extradition of CHARLES G. COLLINS under the Treaties Between the United States and Great Britain.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

C. Olive Bayley, His Britannic Majesty's Consul General at the Port of New York, being duly sworn deposes and says upon information and belief:

188 First. That heretofore and on or about the 2nd day of February in the year 1917 at Bombay, British India and within the jurisdiction of His Britannic Majesty, one Charles G. Collins did commit the crime of obtaining property by false pretenses, to wit: did on or about the 2nd day of February in the year

1917 at Bombay, aforesaid, obtain by false pretenses a pearl necklace of the value of Seventy-five Thousand Rupees, of the value in the moneys of the United States of about $24,330, from the firm of Pohwomul Brothers of Bombay, aforesaid, by falsely and fraudulently representing himself as a Lieutenant Colonel attached to the H. O. W. Royal Marines on furlough, and delivered to the said firm of Pohwomul Brothers for the said pearl necklace a draft for Seventy-five Thousand Rupees, which he falsely represented would be paid upon presentation, which draft upon presentation was dishonored and unpaid.

Second. That the said Charles G. Collins is a fugitive from the justice of British India and is now within the territory of the United States.

Third. That the crime with which the said Charles G. Collins is herein charged is an offence within the treaties between the United States and Great Britain.

Fourth. That deponent's information and belief are based upon two messages received by cable, one from His Britannic Majesty's Secretary of State for Foreign Affairs, and one from the Governor of Bombay, which messages also state that a Warrant has been issued in Bombay for the apprehension of the said Charles G. Collins for the crime herein alleged against him. (Signed) C. Olive Bayley.

Subscribed and sworn to before me this 5th day of November 1917. (Signed) Sam M. Hitchcock, U. S. Commissioner, Southern District of New York. Saml. M. Hitchcock, U. S. Commissioner, and also a Commissioner Especially Appointed to Execute the Provisions of Title LXVI of the Revised Statutes of the United States for Giving Effect to Certain Treaty Stipulations Between This and Foreign Governments for the Apprehension and Delivery up to Certain Offenders.

I hereby certify the foregoing to be a true copy of the Original Complaint in the above entitled cause filed in my office this 5th day of November 1917. (Signed) Sam M. Hitchcock, United States Commissioner, Southern District of New York. [Seal.]

A true copy. (Signed) A. H. Browne, U. S. Commissioner. [Seal.]

189 The President of the United States of America to Any Marshal of the United States *to* the Deputies of Any Such Marshal or Either of Them:

Whereas, a complaint has been made on oath under the treaties between the United States and Great Britain, signed at Washington on the ninth day of August One thousand eight hundred and forty-two and ratifications were exchanged at London, on the thirteenth day of October in the same year, and of the conventions supplementary to the said Treaty between the same High Contracting Parties, concluded and signed at Washington July 12th, 1889 and December 13th, 1900 before me, Saml. M. Hitchcock, one of the Com-

missioners appointed by the District Court of the United States for the Southern District of New York and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States for giving effect to certain treaty stipulations between this and foreign Governments for the apprehension and delivery up of certain offenders: that heretofore and on or about the end day of February in the year 1917 at Bombay, British India and within the jurisdiction of his Britiannic Majesty, one Charles G. Collins did commit the crime of obtaining property by false pretenses, to wit: did on or about the 2nd day of February in the — 1917 at Bombay, aforesaid, obtain by false pretenses a pearl necklace of the value of Seventy-five Thousand Rupees, of the value in the moneys of the United States of about $24,330, from the firm of Pohwomull Brothers of Bombay, aforesaid, by falsely and fraudulently representing himself as a Lieutenant Colonel attached to the H. O. W. Royal Marines on furlough, and delivered to the said firm of Pohwull Brothers for the said pearl necklace a draft for Seventy-five Thousand Rupees, which he falsely represented would be paid upon presentation, which draft upon presentation was dishonored and unpaid; that the said Charles G. Collins is a fugitive from the justice of British India and is now within the territory of the United States of America; that the crime with which the said Charles G. Collins is charged is an offense within the treaties between the United States and Great Britain.

Now therefore, we command you forthwith to take the said Charles G. Collins and bring him before me the said Commissioner at my office Room 314 in the Post Office Building, in the City of New York, or before the nearest Justice, Judge or Commissioner in the District in which the said Charles G. Collins is apprehended, authorized to act in proceedings for the extradition of Fugitives from the justice of foreign governments as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said Charles G. Collins may be heard and considered, and if deemed sufficient to sustain the charge that the same may be certified together with a copy of all the proceedings to the secretary of State that a warrant may issue for his surrender pursuant to the said Treaties.

190 Witness my hand and official seal this 5th day of November in the year One thousand nine hundred and seventeen. (Signed) Sam M. Hitchcock, U. S. Commissioner, and also a Commissioner Especially Appointed to Execute the Provisions of Title LXVI of the Revised Statutes of the United States for Giving Effect to the Certain Treaty Stipulations Between This and Foreign Government- for the Apprehension and Delivery up of Certain Offenders.

A true copy. (Signed) A. H. Browne, U. S. Commissioner. [Seal.]

Received this warrant on the 12 day of November, 1917, at New Orleans and executed the same by arresting the within named

Charles G. Collins by producing him before A. H. Browne, U. S. Commissioner on the 12th day of November, 1917, and have his body now in court, as within I am commanded. Frank M. Miller, U. S. Marshal, Eastern District of Louisiana. D. A. Sanders, Deputy. 12th day of November, 1917.

Petition & Order for Appeal.

[Filed March 6, 1919.]

United States District Court in and for the Eastern District of Louisiana.

No. 15959.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus & Certiorari.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

The petition of Charles Glen Collins, applicant in the above entitled and numbered proceedings for writs of habeas corpus and certiorari, respectfully represents—

That there is error to his prejudice in the judgment rendered and signed in these proceedings on the 21st day of February 1919 and that petitioner is aggrieved thereby and desires to take an appeal to the Honorable the Supreme Court of the United States with supersedeas; that petitioner has prepared and files herewith his assignment of error and is ready and prepared to furnish a bond with good and solvent surety in such amount as the Court may order condi-
191 tioned as the law directs, for the payment of damages and costs of appeal and for any other penalty that may be inflicted or named.

Wherefore, petitioner prays that he be granted an appeal from the judgment rendered and signed in these proceedings on the 21st day of February 1919 returnable to the Honorable the Supreme Court of the United States within the time and in the manner pointed out by law upon petitioner furnishing a bond for such amount as may be ordered by this Court conditioned as the law directs and for the payment of damages and *and* costs of appeal or any other penalty that may be inflicted or named; and that citation of appeal issue. (Signed) J. Zach Spearing, Atty.

Order.

The above and foregoing petition of Charles Glen Collins praying that he be alloweed to appeal to the Supreme Court of the United States from the judgment and decree rendered and signed in these proceedings on the 21st day of February 1919 and that a

certified copy of the transcript of the record upon the said order and decree be transmitted to the Supreme Court of the United States, and the Court being of the opinion that the said Charles Glen Collins is entitled to the appeal as prayed for by him.

It is ordered that an appeal to the Supreme Court of the United States from the judgment and decree rendered and signed in these proceedings on the 21st day of February 1919 be and the same is hereby allowed and that a certified transcript of the record of all the proceedings herein and of the returns and pleadings in this case duly authenticated be forthwith transmitted to the Supreme Court of the United States.

It is further ordered, that the bond of appeal conditioned as the law directs and for the payment of damages and costs of appeal, or any other penalty that may be inflicted or named, be and the same is hereby fixed at the sum of Five Hundred & 00/100 ($500.00) Dollars and that a stay of procedure upon the said judgment and decree appealed from be and the same is hereby granted.

This 3rd day of March, 1919. (Signed) W. I. Grubb, United States District Judge.

192 **Assignment of Errors.**

[Filed March 6, 1919.]

United States District Court in and for the Eastern District of Louisiana.

No. 15959.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus & Certiorari.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

Now comes Charles Glen Collins, petitioner herein by J. Zach. Spearing, his Attorney, and makes and files the following assignment of errors which he alleges occurred upon the hearing herein and in the entry of the judgment or decree in these proceedings from which the said Charles Glen Collins has taken an appeal and upon which assignment of errors he will rely in the prosecution of his appeal herein:

1st. The Court erred in dismissing the writ of habeas corpus as to the charge by Mahomed Alli Zaimal Ali Raza sued out by petitioner herein.

2nd. The Court erred in remanding petitioner to the House of Detention to await further proceedings on the two affidavits of Pohoomull Bros., and of Ganeshi Lall & Sons notwithstanding that according to the judgment appealed from the writ- of habeas corpus in those two cases were granted.

3rd. The court erred in denying the writ of habeas corpus as to one affidavit and granting the writ of habeas corpus in part as to the other affidavits, but the Court should have granted the writ of habeas corpus in its entirety and should have ordered petitioner discharged from custody.

4th. The Court erred in holding that petitioner was lawfully held in custody by the Marshall of the United States for the Eastern District of Louisiana to await the action of the Department of State of the United States upon the application to extradite him to the City of Bombay in British India.

5th. The Court erred in holding that petitioner was lawfully held, imprisoned and restrained of his liberty by the Marshall of the United States for the Eastern District of Louisiana and was not entitled to be discharged therefrom.

6th. The Court erred in holding that the informations filed against petitioner before the Esplanade Police Court of Bombay, British India charging petitioner with having committed the offense of cheating under Section 420 of the Indian Penal Code were sufficient under the extradition treaties between the Government of the United States and the Government of Great Britain proclaimed November 10th, 1842 and the supplementary extradition
193 treaty between the same Countries proclaimed April 22nd, 1901, or any other convention or treaty in force between those two Countries, to arrest, hold or detain petitioner, or to justify his extradition because the offense of cheating is not one of the offenses for which a person, and particularly for which petitioner, could be extradited.

7th. The Court erred in not holding that petitioner was denied due process of law because Hon. Rufus E. Foster, United States District Judge sitting as Extradition Commissioner, refused petitioner the right and opportunity accorded him by the laws of and practice in the State of Louisiana to testify or to make a voluntary declaration in his own behalf and also of the refusal by the said Extradition Commissioner of the right and opportunity accorded him by the said laws of and practice in the State of Louisiana to have other witnesses than himself examined in his own behalf and the like refusal of the right and opportunity to produce and file in evidence documentary evidence in his behalf.

8th. The Court erred in not holding that petitioner was denied by Hon. Rufus E. Foster, the right granted to and possessed by him under the tenth article of the treaty between the United States and the Kingdom of Great Britain proclaimed November 10th 1842 to the protection of the laws of and practice in the State of Louisiana in which petitioner was arrested and according to the laws of and practice in which said State petitioner had and has the right to testify and to make a voluntary declaration in his own behalf and to have witnesses examined and to introduce and to have admitted documentary evidence in his own behalf before a Committing Judge or Magistrate.

9th. The Court erred in not holding that petitioner was denied by the said Hon. Rufus E. Foster the protection granted to and possessed by him under the fifth amendment of the Constitution of the United States of America in that he had been and is being deprived of his liberty without due process of law because under the treaties and conventions between the Kingdom of Great Britain and the United States of America it is expressly provided that no person shall be surrendered by either of the two Nations concerned except upon evidence of criminality "as, according to the laws of the place where the fugitive, or person so charged, shall be found, would justify his apprehension and commitment, for trial, if the crime or offense had there been committed," and that according to the laws of and practice in the State of Louisiana in which State petitioner was arrested he was entitled to testify in his own behalf and was also entitled to have witnesses examined in his own behalf before the Committing Judge or Magistrate and likewise to have introduced and admitted documentary evidence in his own behalf and that each and all of his rights were denied to your petitioner by the said Hon. Rufus E. Foster.

10. The Court erred in not holding that no legal proof was submitted to or produced before the Hon. Rufus E. Foster of the commission by petitioner of the crime or offense mentioned in the complaints of Thomas F. Carlisle, British Consul General at the City of New Orleans, or of the crime or offense mentioned
194 in the authenticating certificates attached to the documents which were admitted in evidence or mentioned in the information or charges filed before the Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate of said Police Court, or of either of said crimes or offenses, or of any other crime or offense.

11th. The Court erred in not holding that no legal proof was submitted to or produced before Hon. Rufus E. Foster on which reasonable ground for a belief that petitioner had committed the crime or offense mentioned in the complaints of Hon. Thomas F. Carlisle, British Consul General at the City of New Orleans or mentioned in the authenticating certificates attached to the documents offered in evidence or mentioned in the informations or charges filed before the said Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate of said Police Court, or of either or any of said crimes or offenses, or any other crime or offense could be based.

12th. The Court erred in not holding that none of the evidence, papers or exhibits which were submitted to the Hon. Rufus E. Foster and by him admitted in evidence over the objection and protest of petitioner were authenticated in accordance with the provisions of the statutes in such cases made and provided so as to entitle them to be received in evidence in the proceedings before the said Hon. Rufus E. Foster.

13th. The Court erred in not holding that the transactions referred to in the depositions and documents which were admitted

in evidence over the objection and protest of petitioner are not crimes nor offenses under the laws of the State of Louisiana in which your petitioner was arrested, nor under the laws of British India where it is alleged the said transactions took place, but the Court should have held that the said transactions constituted and were mere commercial transactions in which credit was freely and voluntarily extended.

14th. The Court erred in not holding that even if the said transactions are criminal according to the laws of British India, they do not constitute an offense which, under the treaties or conventions in force between the United States and the Kingdom of Great Britain, are extraditable or for which extradition can be had.

15th. The Court erred in not holding that there is a fatal variance in each of the three sets of documents from Bombay, India, offered, introduced and admitted in evidence over protest by petitioner between the charge brought against petitioner in the Esplanade Police Court of Bombay, India which is the offense of cheating under Section 420 of the Penal Code of India and the offense mentioned in the authenticating certificates of the Secretary for the Indian Government and the Consul General of the United States at Calcutta, India which is the offense of obtaining valuable property by false pretenses, which said two offenses are not the same but are different in nature and character in this that the offense of cheating under Section 420 of the Penal Code of India which is not extraditable under the treaties and conventions existing between the United States and the Kingdom of Great Britain is the failure to perform a promise of future payment where the
195 intent not to perform is proved to have existed at the time of making of the promise and the gist of the offense of obtaining valuable property by false pretenses which is extraditable is, according to the laws enforced in the State of Louisiana, a false representation concerning a past or present fact.

16th. The Court erred in not holding that petitioner was being deprived of his liberty without due process of law and in violation of the provisions of the treaties and conventions between the United States and the Kingdom of Great Britain and particularly in violation of the provisions of the tenth article of the treaty between the said two Countries dated August 9th, 1842 and proclaimed November 10th, 1842 and in violation of the fifth amendment to the Constitution of the United States of America and in violation of the laws of Louisiana.

And petitioner, Charles Glen Collins, prays that the judgment and decree made and rendered herein on the 21st day of February, 1919 for the errors aforesaid and for other errors in the record and proceedings herein made *by* reversed and set aside and that petitioner be restored to all things which he lost or has lost by reason of the said judgment and that the United States District Court for the Eastern District of Louisiana be directed to enter in favor of petitioner a judgment and decree maintaining the writ of habeas corpus issued in these proceedings and discharging petitioner from the cus-

tody of the Marshall of the United States of the Eastern District of Louisiana and restoring petitioner to his liberty. (Signed) J. Zach Spearing, Atty. for Charles Glen Collins.

Presented this 3rd day of March, 1919. (Signed) W. I. Grubb, District Judge.

Bond.

[Filed March 6, 1919.]

Know all men by these presents, That we, Charles Glen Collins, as principal, and United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto Frank M. Miller, U. S. Marshal and Harry J. Carter, Clerk of the U. S. District Court, both of the Eastern District of Louisiana, and any and all others concerned in the full and just sum of Five Hundred & 00/100 ($500.00) dollars to be paid to the said parties or any of them, their certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this Sixth day of March in the year of our Lord, one thousand nine hundred and Nineteen.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, entitled In the matter of the Application of Charles Glen Collins for Writs of Habeas Corpus and Certiorari a judgment was rendered against the said Charles Glen
196 Collins and the said Charles Glen Collins having obtained an order of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Frank M. Miller, U. S. Marshal for the Eastern District of Louisiana citing and admonishing him to be and appear before the United States Supreme Court, to be holden at Washington, District of Columbia, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Charles Glen Collins shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue. (Signed) Charles Glen Collins. [Seal.] (Signed) United States Fidelity & Guaranty Co., By T. B. Norton, Attorney in Fact. [Seal.] Sealed and delivered in presence of (Signed) J. Zach Spearing. Sylvester Titus.

Approved by (Signed) W. I. Grubb, District Judge.

[Endorsed:] U. S. District Court, Eastern District of Louisiana. No. 15,959. In the Matter of the Application of Charles Glen Collins. Bond for Writs of Habeas Corpus, etc.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

Personally Appeared, Mr. Thomas B. Norton, Agt. U. S. Fidelity & Guaranty Company, who being duly sworn, deposes and says that said company is the surety on the within bond, that said company is authorized to do business in the State of Louisiana and is worth the full sum of five hundred & 00/100 ($500.00) Dollars, over and above all his debts and liabilities and property exempt from execution. (Signed) T. B. Norton, Agt. & Atty. in Fact.

Subscribed and sworn before me this 6th day of March, 1919. (Signed) J. Zach Spearing, Not. Pub. [Seal.]

197 **Præcipe.**

[Filed March 12, 1919.]

In the United States District Court for the Eastern District of Louisiana.

No. 15959.

In the Matter of CHARLES GLEN COLLINS Praying for Writs of Habeas Corpus & Certiorari.

The Clerk of the United States District Court for the Eastern District of Louisiana is hereby directed in making up the Transcript for the Supreme Court of the United States to omit therefrom the following, to wit:

The affidavits of James Paterson, Hugh Allan, A. S. D. Thomson, John Richard Campbell Howie and Edward Courtice which were taken respectively in Glasgow and London the said affidavits having been excluded by the ruling of the Hon. Rufus E. Foster, Judge of the United States District Court.

New Orleans, La., March 12th, 1919. (Signed) J. Zach Spearing, Atty. for Charles Glen Collins.

Petition of Tom F. Carlisle, British Consul General, and Order for Appeal.

[Filed March 28th, 1919.]

In the United States District Court for the Eastern District of Louisiana, at New Orleans.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

To the Honorable the United States District Court for the Eastern District of Louisiana:

The petition of Tom F. Carlisle, British Consul General, respectfully represents:

That there is error to the prejudice of petitioner in the judgment herein rendered and signed on February 21st, 1919, and that your Petitioner as representative of said British Government is aggrieved thereby, and desires to take an appeal to the Honorable, the Supreme Court of the United States with supersedeas.

That Petitioner has prepared and files herewith his assignment of errors, and is ready and prepared to furnished bond with good and solvent surety, if, in the opinion of this Honorable Court, it is necessary that a bond be given, in such sum as this Court may order, conditioned as the law directs.

198 Wherefore, Petitioner prays that he be granted and appeal from said judgment, returnable to the Supreme Court of the United States, as by law provided, upon Petitioner furnishing a bond for such amount as this Court may order, conditioned as by law directed, and that citation of appeal herein issue. (Signed) Robert H. Marr, For Petitioner.

Order.

It is ordered that an appeal to the Supreme Court of the United States from the judgment and decree herein rendered and signed February 21st, 1919, be, and the same is hereby allowed Petitioner, returnable to the Honorable, the Supreme Court of the United Stats April 7th, 1919.

It is further ordered that bond of appeal, conditioned as by law directed, be and the same is hereby fixed at the sum of Five Hundred ($500.00/100), and that a stay of proceedings upon said judgment and decree appealed from be, and the same is hereby granted. (Signed) W. I. Grubb, United States District Judge. March 28, 1919.

Assignment of Errors by Tom F. Carlisle, British Consul General.

[Filed March 28, 1919.]

In the United States District Court for the Eastern District of Louisiana, at New Orleans.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

Now comes Tom F. Carlisle, British Consul-General, Petitioner, through his Counsel, Robert H. Marr, who makes and files the following assignment of errors, which he alleges occurred upon the hearing herein and the entry of the judgment in the proceedings from which the said Tom F. Carlisle, British Consul-General, has taken an appeal, and upon which assignment of errors he will rely in the prosecution of this appeal.

That it was error as to the commitment based on the charge of obtaining property by false pretences from Pohoomul Brothers, and on the charge of obtaining property by false pretences from Ganeshi Lall & Sons, to grant writs of habeas corpus and to remand relator to the House of Detention to await further proceedings, and the further order that the cause be remanded to the Honorable Rufus E. Foster to the end that relator be given an opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana.

199 That Petitioner specially assigns as error the granting of the writs of habeas corpus as hereinabove recited. (Sig.) Robert H. Marr, For Petitioner.

Presented this 28th day of March, 1919. (Signed) W. I. Grubb, District Judge.

Bond of Appeal.

[Filed March 28, 1919.]

Know all men by these presents, That we, Tom F. Carlisle, British Consul General of New Orleans, La., as principal, and Robert H. Marr, of New Orleans, La., as surety, are held and firmly bound unto Charles Glen Collins in the full and just sum of Five Hundred dollars to be paid to the said Charles Glen Collins his certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 28th day of March, in the year of our Lord, one thousand nine hundred and nineteen.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between United States on the relation of Charles Glen Collins vs. Frank M. Miller, United States Marshal, praying for a writ of Habeas Corpus in the suit No. 15959 of the docket of said Court, a Judgment was rendered against the said Tom F. Carlisle British Consul General and the said Tom F. Carlisle, British Consul General having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said Charles Glen Collins citing and admonishing him to be and appear before the Supreme Court of the United States, to be holden at Washington, D. C., within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Tom F. Carlisle, British Consul General shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue. (Signed) Tom F. Carlisle [Seal], British Consul General, By His Atty., Robert H. Marr. [Seal.] Robert H. Marr. [Seal.]

Sealed and delivered in presence of —— ——.

Approved by (Signed) W. I. Grubb, U. S. District Judge.

200 [Endorsed:] U. S. District Court, Eastern District of Louisiana. No. 15959. United States ex rel. Charles Glen Collins. Bond. Frank M. Miller, U. S. Marshal.

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Clerk's Office.

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 231 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors and proceedings in the case of "United States Ex Rel. Charles Glen Collins, versus Frank M. Miller, United States Marshal," No. 15959, of the Docket of said Court (made in accordance with the præcipe for transcript copied at page 226 of said transcript) in the matter of the said appeal taken by the Relator Charles Glen Collins, and also a true and perfect copy of the Petition and Order for Appeal, Assignment of Errors and Bond of Appeal taken by Tom F. Carlisle, British Consul General.

Witness my hand, and the seal of said Court, at the City of New Orleans, Louisiana, this 29th day of March, A. D., 1919. H. J. Carter, Clerk. [Seal District Court of the United States, Eastern District of Louisiana, New Orleans Division.]

Issued for J. Zach. Spearing, Atty. for Relator.

THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Frank M. Miller, United States Marshal for the Eastern District of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and Order of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein United States ex rel. Charles Glen Collins, is Appellant, and Frank M. Miller, United States Marshal, is Appellee, in the cause wherein, United States, ex rel. Charles Glen Collins, is Relator, and Frank M. Miller, United States Marshal, is Defendant, No. 15959 of the docket of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to show
201 cause, if any there be, why the judgment rendered against the said Relator, Charles Glen Collins, as in said Petition and Order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William I. Grubb, Judge of the United States District Court, at New Orleans, La., this 8th day of March in the year of our Lord one thousand nine hundred and nineteen. (Signed) Wm. I. Grubb, *Judge* District Judge.

Clerk's Office.

A true copy. H. J. Carter, Clerk. New Orleans, La., March 10, 1919.

Received by U. S. Marshal, New Orleans, La., March 10th, 1919, and on the same day month and year I served the original of which this is a certified copy on Frank M. Miller, U. S. Marshal, by handing same to him in person at New Orleans, La. Frank M. Miller, U. S. Marshal, by Sam W. Taylor, Deputy.

[Endorsed:] Return. United States District Court, Eastern District of Louisiana. N. No. 15959. United States ex rel. Charles Glen Collins. Frank M. Miller, United States Marshal. Citation of Appeal. Marshal's Return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Mar. 28, 1919. Hy. J. Loisil, Dep. Clerk.

Issued for Robert H. Marr, Atty.

THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Charles Glen Collins, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and order of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein Tom F. Carlisle, British Consul General, is Appellant, and United States, ex rel. Charles Glen Collins is Appellee, in the cause wherein, United States, ex rel. Charles Glen Collins, is Relator and Frank M. Miller, United States Marshal, is Defendant No. 15959 of the docket of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to show
202 cause, if any there be, why the judgment rendered against the said Tom F. Carlisle, British Consul General as in said Petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William I. Grubb, Judge of the United States District Court, at New Orleans, La., this 28th day of March in the year of our Lord one thousand nine hundred and nineteen. (Signed) W. I. Grubb, Judge.

Clerk's Office.

A true copy. H. J. Carter, Clerk. New Orleans, La., March 28, 1919.

Received by U. S. Marshal, New Orleans, La., March 29, 1919, and the same day month and year I served the original of which this is a certified copy on Charles Glen Collins by handing the same to him in person at New Orleans, Louisiana. Frank M. Miller, U. S. Marshal, by Sam W. Taylor, Deputy U. S. Marshal.

[Endorsed:] Return. United States District Court, Eastern District of Louisiana. N. No. 15959. United States, Ex Rel Charles Glen Collins. Frank M. Miller, United States Marshal. Citation of Appeal. Marshal's Return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Mar. 29, 1919. E. V. Vendling, Dy. Clerk.

Endorsed on cover: File No. 27,063. E. Louisiana D. C. U. S. Term No. 977. Charles Glen Collins, appellant, vs. Frank M. Miller, U. S. Marshal for the Eastern District of Louisiana. File No.

27,064. Term No. 978. Tom F. Carlisle, British Consul General, appellant, vs. Charles Glen Collins. Filed April 11th, 1919. File Nos. 27,063 and 27,064.

[Endorsed:] File No. 28,627. Supreme Court U. S., October Term, 1921. Term No. 672. Charles Glen Collins, Appellant, vs. Victor Loisel, U. S. Marshal, etc. Stipulation and addition to record. Filed April 6, 1922.

Endorsed on cover: File No. 29,430. E. Louisiana D. C. U. S. Term No. 880. Charles Glen Collins, appellant, vs. Victor Loisel, United States marshal for the eastern district of Louisiana. Filed February 27th, 1923. File No. 29,430.

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WM. R. STANSBU

IN THE

Supreme Court of the United States.

October Term, 1922.

No. 820.

CHARLES GLEN COLLINS,
Appellant,

vs.

VICTOR LOISEL, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA,

BRIEF ON BEHALF OF APPELLANT

J. ZACH SPEARING,
J. KEMP BARTLETT,
GUION MILLER,
BARTLETT, POE & CLAGGETT,
Attorneys for Appellant.

King Bros., Inc., Printers, 336 N. Calvert Street, Baltimore, Md.

IN THE

Supreme Court of the United States.

October Term, 1922.

No. 880.

CHARLES GLEN COLLINS,
Appellant,

vs.

VICTOR LOISEL, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF ON BEHALF OF APPELLANT

This case has been twice heretofore before this Court, and opinions have been twice rendered by Mr. Justice Brandeis.

In the first case the opinion was rendered on March 29, 1920, and will be found in the case of Collins vs. Miller, 252 U. S. 364, and on the second hearing the opinion was rendered on May 29, 1922, and will be found in the case of Collins vs. Victor Loisel, United States Marshal, reported in Vol. 66 U. S., L. ed., p. 560. (See advance opinions under date of July 1, 1922.)

The present appeal is from the judgment of Judge W. I. Grubb of the United States District Court for the Eastern District of Louisiana, December 6, 1922 (Record, p. 10), and the assignment of errors will be found in the Record, pp. 12 to 13.

After the decision of the Supreme Court in the case of Collins vs. Miller, 252 U. S. 364, above referred to, the British Consul General, through his attorney, made application to the Honorable W. I. Grubb, United States District Judge for the Eastern District of Louisiana for a further order in that case, and on October 25, 1921, Judge Grubb entered the following judgment on rehearing, which will be found on pages 5 and 6 of the Record:

"JUDGMENT ON REHEARING."

"Whereas, under date of February 21st, 1919, a judgment was rendered herein denying relator's application for habeas corpus insofar as the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza is concerned, but as to the commitment based on the charge of obtaining property by false pretenses from Pohoomul Brothers and from Ganeshi Lall & Sons, the writs were granted and relator remanded to await further proceedings in said last two-named affidavits, and as to said two affidavits, this cause was remanded to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana, and whereas it has been brought to the attention of the Court, that under said order remanding, no examination has been held, but, on the contrary, that the prosecution under said affidavits has been definitely abandoned by the British Consul General, and other affidavits have been filed by said British Consul General,

"It is now adjudged and decreed that as to the commitment of relator to await the action of the President of the United States on the application of relator to answer the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza, relator's application for habeas corpus be denied and relator is remanded to the custody of Victor Loisel, United States Marshal for the Eastern District of Louisiana, and it is further ordered, adjudged and decreed that as to the commitment based on the charge of obtaining property by false pretenses from Pohoomul Brothers and on the charge of obtaining property by false pretenses from Ganeshi Lall & Sons, the writs of habeas corpus are granted; and as to the two latter commitments and the charges on which they are based, the prisoner is discharged.

"Given this 25th day of October, 1921. (Signed) W. I. Grubb, District Judge."

Thereafter, on April 6, 1922, while Collins was still being held in custody under the above judgment of Judge Grubb, of October 25th, 1921, to answer for the charge of obtaining property from Mahomed Alli Zaimel Ali Raza, two additional affidavits were lodged against him by the British Consul General, Charles Braithwaite Wallis, before Rufus E. Foster, Judge of the United States District Court for the Eastern District of New Orleans, as committing magistrate, again charging Collins with having obtained property by false pretenses from Pohoomul Brothers and from Ganeshi Lall & Sons. (See Record, pp. 18 and 19.) These charges were identical and based upon the identical record that the previous charges had been based upon from which the prisoner had been discharged by the judgment of Judge W. I. Grubb on October 25, 1921. (Record, p. 6.)

Colonel Collins, through his counsel, immediately filed a motion to quash these affidavits (Record, p. 21), which motion was overruled, and Judge Foster proceeded with the hearing of the appellant upon these charges again made through the said affidavits of Consul Wallis, and on August 26, 1922, entered an order again committing the appellant for the purpose of being delivered up as a fugitive from justice

> "to be held for extradition to British India for trial on charges pending against him in the Chief Presidency Magistrate's Court at Bombay, India, and to abide the order of the President of the United States in the premises until further orders of the Court." (Record, pp. 22-23.)

The commitment and the Marshal's return thereon will be found on pages 24 and 25 of the Record.

Thereafter the petition for writs of *habeas corpus* and *certiorari* was filed September 15, 1922, in the United States District Court for the District of Louisiana, as will appear on pages 1 to 4 of the Record, and thereafter, to wit, on December 6, 1922, Judge W. I. Grubb entered a judgment denying the petition of Relator, Charles Glen Collins, and remanded him to the custody of Victor Loisel, United States Marshal (see Record, page 10). From this judgment this appeal was entered. (See Record, p. 10, the Assignment of Errors being set forth on Page 12.)

The motion of the appellant to quash affidavits and the proceedings before Judge Foster, found on page 21 of the Record, should have been granted.

As will be seen by the judgment of Judge Grubb of February 21, 1919 (Record, p. 4), the two charges of obtaining property by false pretenses from Pohoomul Brothers and Ganeshi Lall & Sons were

> "remanded to the Honorable Rufus E. Foster, Judge, to the end that relator be given the opportunity of in-

troducing such evidence as he might offer at a preliminary examination under the law of Louisiana."

But it also appears from the judgment of Judge Grubb of October 25, 1921 (Record, pp. 5 and 6) that

"it has been brought to the attention of the Court that, under said order remanding, no examination has been held, but, on the contrary, that the prosecution under said affidavits has been definitely abandoned by the British Consul General, and other affidavits have been filed by said British Consul General."

It will thus be seen that while the previous *habeas corpus* proceedings were pending before the Court, the British Consul General of his free volition, abandoned the prosecution upon these charges, and this fact being brought to the attention of the Court, the Court entered a judgment that as to these charges,

"the writs of *habeas corpus* are granted, and *as to the two latter commitments and the charges on which they are based; the prisoner is discharged.*"

The charges here referred to are the charges preferred by Pohoomul Brothers and Ganeshi Lall & Sons, for which the appellant is now in the custody of the Marshal, by the order from which this appeal is taken.

It will be further noted that no appeal was taken by the Marshal or the British Consul General from the judgment of Judge Grubb of October 25, 1921, and that on the appeal of the appellant in the case of Collins vs. Loisel, No. 672, of the October Term, 1921, the United States Supreme Court affirmed this judgment of Judge Grubb, and it thereby became final and binding upon all the parties, and yet, in direct disregard of this judgment which in terms discharged the prisoner from these charges, the British Consul General filed affidavits renewing these charges before Judge Foster, and supporting said charges by the identical record which

had been used to support the charges in the former proceedings before Judge Foster, as to which the prisoner had been discharged by Judge Grubb in his judgment of October 25, 1921 (Record, p. 6).

We respectfully submit that the committing magistrate having certified Collins to the State Department for extradition on affidavits identical in every respect with those in the present appeal, and Collins having obtained a writ of *habeas corpus,* which was maintained, and Collins ordered "discharged" on the two affidavits or charges involved in the present appeal, which judgment was affirmed by the Supreme Court, Collins was not amenable to further prosecution on those affidavits or the charges included therein. If this were not so there need never be an end to an extradition proceeding, because upon a prisoner being ordered discharged under a then pending affidavit, the identical affidavit could be immediately renewed, the prisoner again arrested, committed to jail, incarcerated without the benefit of bond *ad infinitum* with the result that he may be confined to prison for the balance of his lifetime.

> "After a prisoner has been committed for surrender, and a writ of *habeas corpus* issued and served upon the Marshal having him in custody, *a second warrant of arrest cannot be executed.* The prisoner must be regarded as being in the custody of the Court under the writ of *habeas corpus,* at least upon the time of its service upon the Marshal, and the Marshal has no right after that time during the pendency of the writ, to arrest the prisoner upon any new warrant or upon any new warrant in his hands at the time the writ was served upon him. See Farez, 7 Blatchford, 35; MacDonnell, 11 Blatchford, 170."
>
> Moore on International Extradition, Volume 1, page 460.

It is to be noted that the judgment entered was not that the affidavits be "dismissed," but, as stated, the prisoner was

"discharged." There would seem to be a clear distinction between discharging the prisoner and dismissing the affidavits. The discharge of the prisoner means, or should mean that he is relieved of the charges from which he has been "discharged." This is not the ordinary case of a second proceeding based on the same offense, where the first proceeding has been dismissed, but as above indicated, there was here a judgment upon which we are now relying, discharging the prisoner upon *habeas corpus* proceedings. The hearing before Judge Grubb on the *habeas corpus* proceedings was in reality a trial, or has the effect of a trial in that it is the only hearing that the accused has in this country, and finally disposes of the matter.

In the *habeas corpus* proceedings pending before Judge Grubb upon which his judgment of October 25, 1921, was entered (Record, pp. 4 to 6), the District Court was not sitting as a Court of Appeals on Review over the action of the committing magistrate, but was acting under totally different jurisdiction, solely to determine whether the action of the committing magistrate had been right at the time he entered the order of commitments upon the record as it then stood in the District Court.

In speaking of this order, Judge Brandeis, in the former appeal, Collins vs. Miller, 252 U. S. 364, at 369, says:

> "It more nearly resembles the kind of an order which an appellate tribunal enters on reversing and remanding the judgment of a lower Court upon finding error in its proceedings. But the proceeding before a committing magistrate in international extradition is not subject to correction by appeal."

See—

Fong Yue Ting vs. United States, 149 U. S. 698, 714;

Sternamen vs. Beck, 80 Fed. 883.

Compare—

United States vs. Ferreira, 13 How. 40, 48;

The United States, Petitioner, 194 U. S. 194.

"And it is ordinarily beyond the scope of the review afforded by a writ of habeas corpus to correct error in the proceedings. In re Kaine, 14 How. 103, 122; *Ex parte* Harding, 120 U. S. 782, 784; Charlton vs. Kelly, 229 U. S. 447, 457; Henry vs. Henkle, 235 U. S. 219, 228. The order resembles, also, that which might be entered by a district judge after having reviewed the proceedings taking place before a United States commissioner, under the Court's authority to assume control in the preliminary stages of matters of which it has the final decision under the law. United States vs. Berry, 4 Fed. 779, 781; *In re* Chin K. Shue, 199 Fed. 282, 284; The Mary, 233 Fed. 121, 124. Compare Todd vs. United States, 158 U. S. 278, 282; United States vs. Allred, 155 U. S. 591, 594; *In re* Perkins, 100 Fed. 950, 954. For an extradition commissioner is an officer of the Court which appoints him (see Grin vs. Shinn. 187 U. S. 181, 187; *In re* Grin, 112 Fed. 790, 794). *But here the extradition commissioner had certified his findings to the Secretary of State before the petition for writ of habeas corpus was filed. Whether, for this reason the time had not passed when the Court could correct the action of its commissioner, except upon reopening of the proceeding before him with the consent of the Executive* (see 6 Op. Atty. Gen. 91), or, in other words, *whether in such a case the power of the Court is not limited to ordering the discharge of the prisoner either absolutely or conditionally except upon a rehearing before the commissioner with the consent of the President—this question, we are not required to consider at this time. For the proceeding ordered by Judge Grubb had not been taken; nor had the power sought to be exercised by him been challenged.* Nor need we consider whether Judge Grubb, having found that a proper hearing had been denied by the committing magistrate on the two

affidavits, might have heard the case *de novo,* and have determined thereon whether the prisoner should be discharged; compare Chin Yow vs. United States, 208 U. S. 8, 13; Whitfield vs. Hanges, 222 Fed. 745, 746; United States vs. William, 193 Fed. 228; for Judge Grubb did not undertake to do so. The prisoner remained under the authority of the District Court (see Mr. Justice Nelson in *In re* Kaine, 14 How. 103, 133-4); and as the writ of *habeas corpus* had not been disposed of there so far as concerned the detention on two of the three affidavits, the decision below on that branch of the case was not final."

At that time, as stated by Judge Brandeis, the proceeding ordered by Judge Grubb had not been taken, nor had "the power sought to be exercised by him been specifically challenged" by the petitioner.

Now this condition has been distinctly changed, for Judge Foster as committing magistrate, has now assumed to act under the authority attempted to be conferred by Judge Grubb in his order of February 21, 1919, and this action on the part of Judge Foster has been distinctly and most emphatically challenged by the petitioner in his motion to dismiss. (Record, p. 7.)

If it should be claimed by the appellee that Judge Foster, in entering the commitment upon which the appellant is now being held, was not acting under the authority of the order of Judge Grubb of February 21, 1919, above referred to, but was acting under the order of Judge Grubb entered October 25, 1921 (Record, pp. 5 and 6), the situation is not improved for the appellee, since under the order of October 25, 1921, Judge Foster was given no authority to further consider the charges preferred by Pohoomul Brothers and Ganeshi Lall & Sons, but on the contrary, by that order Judge Grubb distinctly, definitely, and finally decided that "as to the commitment based on the charge of obtaining property by

false pretenses from Pohoomul Brothers, and on the charge of obtaining property by false pretenses from Ganeshi Lall & Sons, the writs of *habeas corpus* are granted; and as to the two latter commitments *and the charges upon which they are based, the prisoner is discharged.*"

This action of Judge Grubb not only fails to give Judge Foster authority to proceed on these two charges, but on the contrary, expressly denies that right by deciding that as to these charges the petitioner is discharged, and thereby there is entered a judgment from which relief on the part of the appellee could only have been obtained by a proper appeal from the judgment, which appeal never having been taken, the judgment remains conclusive as to all parties.

Judge Brandeis in his opinion above quoted, throws out the suggestion that the Court might order the discharge of the prisoner conditionally, except upon a rehearing before the commissioner with the consent of the President, but there was in neither order any such conditional discharge, and there is no pretense that the rehearing which subsequently took place before Judge Foster as committing magistrate, was with the consent of the President, and it is clear that Judge Foster had no right to proceed independently against the appellant on these charges, first because Judge Grubb, as above stated, had entered a judgment that the petitioner was discharged from the charges on which these commitments are based, and in addition, Collins was at the time in custody, having been committed for surrender, and a writ of *habeas corpus* had been issued and served upon the Marshal having him in custody, and this would preclude simultaneous proceedings against him, as set forth by Mr. Moore in International Extraditions, Volume 1, page 460.

The Order of Commitment by the committing magistrate, Judge Foster, of August 26, 1922 (Record, pp. 22-23), is illegal and void because it fails to specify the charges upon which the accused is held.

It is not sufficient to commit him "to be held for extradition to British India for trial on the charges *pending against*

him in the Chief Presidency Magistrate's Court at Bombay, India." There may be innumerable other such charges pending against him before the Magistrate's Court at Bombay of which the accused has no information, and yet under this commitment as drawn he could if returned to India, be tried upon all such charges.

In the case of United States vs. Ranscher, 119 U. S. 407, the law has been firmly established that on extradition to a foreign country the accused can only be tried from the specific offenses named in the extradition proceedings against him.

It must necessarily follow from this that the charges upon which the accused is committed must be *specifically* stated, so that the offenses for which he was surrendered may be definitely known.

This becomes particularly important under Article III of the Treaty with Great Britain of July 12, 1889 (26 Stat. 1508), where it is provided:

> "No person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or *offense*, committed prior to his extradition, *other than the offense for which he was surrendered*, until he shall have had an opportunity of returning to the country from which he was surrendered."

This makes it necessary that the *offenses* should be specified, so that the accused may be immune from trial of other charges. The broad language of the commitment in this instance would admit of his trial upon any and all charges pending against him in the Chief Magistrate's Court at Bombay, India. Surely the accused is entitled to relief from such a situation and the commitment of Judge Foster being much too broad and far reaching, should be held to be null and void, and the accused should be discharged from the same.

J. Zach Spearing,
J. Kemp Bartlett,
Guion Miller,
Bartlett, Poe & Claggett,
Attorneys for Appellant.

JUDGE FOSTER MADE NO SUFFICIENT FINDING OF PRIMA FACIE EVIDENCE OF CRIMINALITY TO JUSTIFY THE COMMITMENT OF THE ACCUSED.

Under the Extradition Treaty between the United States and Great Britain, it is expressly provided that no person shall be surrendered by either of the two nations concerned, except upon evidence of criminality:

> "As according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed."
>
> Article 10, Treaty of August 9, 1842—8 U. S. Statutes at Large, p. 576.

Section 5270 of the Revised Statutes of the United States provides that—

> "Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign Government, the judge or commissioner having jurisdiction in the place where the accused is found, shall issue a warrant for the apprehension of the prisoner at large that he may be brought before such judge or commissioner *to the end that the evidence of criminality may be heard and considered.*"

In the case of *In re* E. Zeta, 62 Fed. Rep. 964-972, the proposition is laid down that under this Section 5270 of the Revised Statutes, the evidence

> "should amount to probable cause for believing him guilty * * *, and the evidence of criminalty is to be adjudged by the laws of the United States and the State in which they are raised."

It is true that Judge Foster in his order of commitment of August 26, 1922 (Record, pp. 22 and 23) states that—

> "Whereupon and on due consideration of said evidence and testimony, I find and adjudge that the evidence produced against the said Charles Glen Collins is sufficient in law to justify his commitment on the charge of having obtained property by false pretenses."

And again, in the certificate of Judge Foster of the same date, he states (Record, p. 23):

> "That I deem the evidence adduced before me sufficient to show a *prima facie* case to sustain the charges under the law, and the provisions of the treaty of extradition between the Government of the United States and that of the British Government."

If these statements of Judge Foster's stood alone, we would not be in position to claim that the Record failed to show sufficient evidence of criminality to meet the requirements of the treaty, but the Record shows exactly what Judge Foster based his finding of evidence of criminality upon, namely, that the accused had given a draft, and the draft came back with a notation "not authorized to draw," and he states that if there was no evidence that the accused had told the man from whom he bought the jewelry that this draft would be paid, and the draft came back with the notation "not authorized to draw," and nothing else but that, the jury would be warranted in finding him guilty (Record, p. 133.)

And again, on page 132 of the Record, Judge Foster states:

> "He went to one man and bought certain lots of jewelry and gave them a check for five hundred pounds, which was paid, gave a draft for two thousand pounds on Curtice & Co., or whatever it was, and gave them a promissory note. Now that Curtice note or draft was not paid and came back with the notation 'Not authorized to draw.' Before he gave that, the evidence shows that he went to the International Bank, and they suggested that he send a telegram to have his agents in London pay the International Bank sufficient funds to cover this other draft—what was it, five thousand pounds?"
>
> "(Mr. Spearing): Five thousand pounds was the Pohoomul matter."

An again, on page 133 of the Record, the Court states, in speaking of a time draft that it

> "Carries with it the suggestion that he is authorized to draw; whether it is a time draft or a sight draft, it doesn't make the slightest difference. If this case was tried before a jury, and there was no evidence that he

told this man from whom he bought the jewelry that this draft would be paid, and the draft came back with the notation 'Not authorized to draw,' and nothing else but that, the jury would be warranted in finding him guilty."

And again, on page 134 of the Record, the Court says:

"Here is a man buys some ten thousand pounds' worth of jewelry, nine thousand pounds' worth of jewelry or something like that, and drew drafts on people that returned them with the notation that he was not authorized to draw, why it is fraudulent on the face of it. There is no reason why anybody should buy jewelry unless you have got the money to pay for it; buying flour or something else, why it would be different, but with pearl necklaces and things of that sort * * *."

Again on page 135:

"It makes no difference whether Lieutenant Colonel Collins was or was not—I put all that to one side. Here is evidence tending to show he was an undischarged bankrupt and those sort of things, but just on that transaction itself, buying these articles of jewelry and giving drafts, which drafts were returned with the notation 'Not authorized to draw,' I say that makes a *prima facie* case of fraud, obtaining goods by fraudulent pretenses."

"(Mr. Spearing): Of course if your Honor has reached that conclusion there is nothing that I can say that can change your conclusion."

"(The Court): Not a thing; there is nothing you can say to change my conclusion on that state of facts."

"(Mr. Spearing): That is the only state of facts before you, because your Honor will not permit any other than those facts to go in. In my statement I said he didn't represent that he had the right to draw the drafts."

This and the full discussion between Judge Foster and Mr. Spearing, appearing in the Record, pages 125 to 135, shows conclusively that Judge Foster based his conclusion that there was sufficient evidence of criminality solely upon the legal conclusion that the giving of a time draft by the accused on a party with whom he had no funds at the time,

and from whom he had no authority to draw, constituted *per se* such a false pretense and representation as to be the basis for a charge of obtaining property by false pretenses, and this we submit, is in direct conflict with the law and decisions of the State of Louisiana on the subject of what shall constitute obtaining money under false pretenses. If Judge Foster is wrong in this legal proposition, then there is no sufficient finding of fact by him of evidence of criminality according to the laws of the place where the fugitive or the person so charged shall be found as would justify his apprehension and commitment for trial, if the crime or offense had there been committed.

In Louisiana a promise to pay is not a pretense within the meaning of the Statute, against obtaining property by false pretenses.

The case of State of Louisiana vs. Clement Colly, 39 La. An. 841, well illustrates the difference between the American doctrine of false pretense and the offense of "cheating" under the India Code. In that case it was held that in a prosecution for obtaining money or property by false pretenses, the indictment must contain averments that the accused made false representations of a state of things past or present, and that the indictment will not be good if the alleged false representations refer to the future only.

And again, in the same opinion the Supreme Court of Louisiana said:

> "A promise is not a pretense within the meaning of the Louisiana Statute, even when the party making the same *does not intend to keep it.*"

The Louisiana doctrine is not peculiar in this respect, nor is it limited, in its application, to that State.

It is the same doctrine that is now and has always been applied throughout the Nation.

> Wharton, Am. Crim. Law, secs. 2085, 2087, 2096, 2112;
>
> 2 Bishop on Crim. Law, secs. 397, 400, 401;
>
> Johnson vs. Stockham, 89 Md. 358 at 364.

Under the Indian Penal Code, however, it has been held:

> "A. intentionally deceives Z. into a belief that A. means to repay any money that Z. may lend to him,

and thereby dishonestly induces Z. to lend him money, A. not intending to repay it. A. *cheats.*"

1 Stokes Anglo-Indian Codes, p. 252 (illustration f).

And again:

"A. intentionally deceives Z. into a belief that A. means to deliver to Z. a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z. to advance money upon the faith of such delivery. A. *cheats;* but if A., at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

1 Stokes Anglo-Indian Codes, p. 252 (illustration g).

And that:

"A. receives from B. a Government promissory note, promising to return certain jewels pledged to him, but not intending to do so, and subsequently claims to retain the note for another debt alleged to be due to him by B. A. *cheats.*"

3 N. W. P. 17;

1 Stokes Anglo-Indian Codes, p. 253.

Hence false statement as to a *future fact,* or even a present intention not to do that which one says he will do, may constitute a deception within the meaning of the Indian Offense of Cheating, and consequently one punishable by as much as seven years at hard labor and a fine. This led an Indian Court to observe that:

"The obvious inconveniences resulting from such a doctrine can only be avoided by cleaving to the rule that mere *breach of contract is not* even *prima facie evidence of an original fraudulent intention.*"

Mayne Commentaries on the Indian Penal Code, 350; 9 Bom. H. C. 448;

See foot note—Stokes Anglo-Indian Codes, p. 252.

This, we think, is the controlling distinction that should be applied in this case. There is no testimony or evidence in the Record of a fraudulent intention on the part of the appellant at the time he asked for credit.

The fact that he had no funds in the hands of the drawee of the draft, and that he had no express authority to draw, cannot, under the above decisions, be regarded as *prima facie* evidence of fraudulent intent, and the actual testimony in the case and the circumstances surrounding the obtaining of credit completely disproves any actual fraudulent intention.

The gist of the Indian offense of cheating is, as has been seen, a dishonest intention not to perform a promise of future performance, which promise has been relied upon by the promisee, whereas the gist of the American crime of obtaining property by false representations is a false statement concerning a past or existing fact.

The elements that constitute the offense of cheating in India do not constitute any crime at all in America. It is not every dishonest act that can be said to be a criminal act. The extradition treaties have to do with certain crimes of the more reprehensible or dangerous character, and in the case of our treaty with Great Britain these crimes are limited to thirteen in number. It has never before been suggested that a man who does not pay his debt when it is due, and whose offense is of a no more reprehensible or dangerous character than this, must be surrendered to the justice of an alien nation to stand trial at a place where unsworn and hearsay letters of attorneys and detectives in the employ of the creditors seem to be given the weight of legal evidence, and where the law punishes with fearful and shocking severity a mere failure to perform a promise of future payment.

Article X of our treaty with Great Britain of August 9th, 1842, which is still in force, provides that no person shall be surrendered by either nation except upon such evidence of criminality:

> "as, according to the laws of the place where the fugitive or person so charged, shall be found, would justify

his apprehension and commitment for trial, if the crime or offense had there been committed."

See—

Pettit vs. Walshe, 194 U. S. 205.

The treaty provisions, as well as the law of the place where the accused was arrested were both ignored by the Judge, who, acting as commissioner, has held Colonel Collins for the action of the State Department.

In Regina vs. Walne, 11 Cox, C. C. 647, where the defendant gave a check as the purchase price of a mare, *and at the time exacted a promise* that it should not be cashed *until two days later*, it was held that he could not be convicted of obtaining property by false pretenses.

State vs. Ferris, 171 Indiana 562;
Commonwealth vs. Althause, 207 Mass. 32.

It has been held that:

Obtaining credit in account from the party's own banker *by drawing a bill of exchange on a person on whom the party has no right to draw*, and which has no chance of being paid, is not a false pretense, though the banker pays money for him in consequence to an extent that he would not otherwise have done.

The Jurist, New Series—

Rex vs. Wavell, 1 *Moody Crown Cases*, 224;
Regina vs. Eagleton, 1 Jur. N. S. 944;
State vs. Moore, 15 Iowa, 412;
Wheeler vs. People, 49 Colo. 402.

There is nothing in the Record to indicate that the other alleged misrepresentations were made to induce the deal in question, or that they were made with the intention of fraudulently inducing the complainant to part with his property, or that they did so in fact induce him to part with his property, and in fact some of the alleged misrepresentations appear to have been made after the delivery of the goods. Thus, the Pohoomul Brothers necklace was delivered on February 7, 1917 (Record, p. 79), while several of the alleged misrepresentations were made on February 22nd, 23rd and 25th,

1917 (Record, p. 80). And as to the Ganeshi Lall claim, the delivery was made on February 19, 1917 (Record, p. 100), while some of the alleged misrepresentations took place on February 22, 1917 (Record, p. 101).

Surely it is essential in order to constitute the offense of obtaining property by false pretenses, that the false representations should have been made prior to the delivery, and that they should have induced the delivery.

Young vs. Rex, 3 T. R. 104 (Term Reports);
Regina vs. James, 12 Cox C. C. 127;
Doxey vs. State, 47 Tex. Crim. 503;
Regina vs. Gray, 17 Cox C. C. 299;
Regina vs. Hazelton (L. R.), 2 C. C. 139.

In *Regina vs. Larner,* 14 Cox C. C. 497, the prisoner was charged with obtaining a swimming prize by false pretenses. He represented himself to be a member of a certain club and produced a letter purporting to be from the secretary of that club, and on the faith of these representations, which were false, he was allowed 20 secs. handicap, and won the prize. It was held that the false pretenses were *too remote.*

To the same effect see Regina vs. Gardner, 7 Cox C. C. 136, where the accused falsely pretended to be a naval officer. He was charged with obtaining his board by false pretenses. Held too remote.

The *pretense* must relate to an *existing* or *past fact.*

Regina vs. Hazelton (L. R.), 2 C. C. 139;
Regina vs. Giles, 11 L. T. (N. S.) 643; 10 Cox C. C. 44;
Regina vs. Woodman, 14 Cox C. C. 179; 28 Moak. 561;
Regina vs. Lee, 8 Cox C. C. 233.

If prosecutor relies on his own judgment, no offense is committed.

Regina vs. Ball, 1 C. & M. 249;
Bryant vs. Commonwealth (Ky.), 47 S. W. Rep. 578.

None of the Proceedings Before the Magistrate's Court at Bombay Should Have Been Considered by Judge Foster.

In the hurry resulting from the advance of the last hearing in this Court, before the Record had been printed, one serious objection to the commitment of the accused by Judge Foster was overlooked; it is this:

It appears on page 59 of the old Record and on page 120 of the present Record, that Judge Foster sustained the objection of Judge Spearing, which appears at the bottom of page 119 of the Record as follows:

> "I further object to the certificate of A. H. S. Ashton, Chief Presidency Magistrate on the Ganeshi Lall affidavits and the certificate of Chunilal H. Setalvad, Acting Chief Presidency Magistrate. I object to those certificates on the ground that the certificates are no part of the testimony or depositions which were taken upon which the warrant was issued, and are but the expression and conclusion of the persons giving the certificates, which is not justified by the law, and is not binding upon the Court."

The certificates thus excluded from consideration by Judge Foster constituted an essential part of the papers transmitted from India upon which Judge Foster was assuming to act. These certificates being eliminated as they were by the action of Judge Foster in sustaining Judge Spearing's objection, breaks the chain of certification made essential for the validity of the proceedings before the Chief Presidency Magistrate at Bombay as evidence of the criminality of the accused. These papers thus becoming inadmissible, by reason of the failure of these certificates, there was not sufficient evidence of criminality before Judge Foster, and therefore his action in holding the accused was clearly erroneous.

It will be noted that the certificate of James A. Smith, Consul General of the United States of America at Calcutta, India, found on page 98 of the Record, directly refers to the authentication contained in the certificate of Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, of Bombay, found on page 78 of the Record, and if the certificate of Setalvad is omitted, it would destroy the effect of the certificate of James A. Smith, as Consul General; and likewise the certificate of A. H. Grant, Secretary to the Government of India, found on page 98 of the Record, refers to the certifications of A. H. S. Ashton (Record, p. 99) and that certification likewise having been excluded by Judge Foster, this renders the certificate of Grant ineffective, and makes another break in the necessary certifications required to make the proceedings legal evidence before Judge Foster.

We submit that whether or not Judge Foster may have committed error in thus excluding the certificates, their elimination completely destroys the chain of testimony attempted to be introduced against the accused and the whole proceedings which are based upon this evidence must necessarily fail.

If Judge Foster committed error, which we by no means concede in excluding these certificates, the British Consul General cannot correct this alleged error in these proceedings. Judge Foster based his action upon these proceedings in part certified by these two magistrates after having excluded their certifications, which certifications were necessary in order to give validity to the papers. This action was therefore illegal and the prisoner should be discharged.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922

No. 672

CHARLES GLEN COLLINS,

Appellant,

versus

VICTOR LOISEL, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA,

Appellee.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

Brief for Appellee.

STATEMENT OF THE CASE.

Three affidavits were made charging relator with being a fugitive from the justice of India. Two affidavits were tried together, and the Commissioner ordered the surrender of the fugitive. Thereafter, trial was had on th third affi-

davit, and the fugitive was ordered surrendered. On application for *habeas corpus* the District Court denied the writ as to one affidavit, and remanded the other two affidavits to the Commissioner for the taking of testimony which had been offered by relator, but rejected by the Commissioner. From this judgment an appeal was taken to the Supreme Court by both sides. That appeal was dismissed on the ground that there had been no final judgment. Judge Foster, who had acted as Commissioner, taking the position that Judge Grubb was without authority to remand the matter for further hearing, the original affidavits were dismissed, and new affidavits, with the exact recitals of those dismissed, were made. On these affidavits surrender was ordered. The finding of Judge Foster, sitting as Commissioner, was certified to the Secretary of State. The Secretary of State refused to issue his warrant on the ground that Collins was by virtue of the *habeas corpus* originally sued out under the authority of Judge Grubb, and remained under that authority until the proceedings were finally terminated by his judgment of October 25, 1921. And the Secretary of State uses this significant language:

> "The Department of State considers that it would have been in a different situation with respect to the case had the proceedings, the record of which is now before it, been commenced subsequent to the order made by Judge Grubb on October 25, 1921."

The ruling of the Secretary of State was based on his interpretation of *In Re Farez, 7 Blatch, 34.* That decision

strongly supports our contention in the present controversy and is quoted further along in this brief.

After Judge Foster, as United States extradition commissioner, had sent his certificate to the Secretary of State, the remanded *Collins case* came up before Judge Grubb. At that hearing counsel for the British Government contended that Judge Grubb's orders had been complied with when new affidavits identical with the old ones had been filed. But Judge Grubb held that Judge Foster had not carried out his instructions, that the two remanded affidavits having been dismissed, it necessarily resulted that as to them *habeas corpus* would have to be granted, but as to the other affidavit in which there had been no remand *habeas corpus* would have to be denied. From this decision Collins took an appeal, and the judgment of the District Court was affirmed by your Honors last May.

Acting upon established jurisprudence and the intimation of the Secretary of State, two new affidavits were made before Judge Foster on April 8, 1922. The fugitive was committed, *habeas corpus* applied for, refused, and this appeal taken by Collins.

POINTS.

A proceeding before a United States extradition commissioner does not put in jeopardy.

Relator's petition for *habeas corpus* shows on its face that he is not entitled to the relief sought, being based

wholly upon the theory of former jeopardy and of *autrefois acquit*. Jurisprudence is uniformally to the effect that these pleas do not hold good, either in the case of proceedings before a committing magistrate or a United States commissioner. It is hardly necessary to quote decisions to the effect that extradition proceedings held before a United States commissioner are considered merely as preliminary examinations, and as such are governed by the law governing preliminary examinations in the State in which the commissioner is seated. See, however, *In Re Farez, 33 Fed., 165; Benson v. McMahon, 127 U. S., 457; In Re Farez, 7 Blatch, 345; In Re Ezeta, 62 Fed., 972; In Re Grin, 102 Fed., 790; Treaty with Great Britain of 1842, Art. X.*

The proposition that a plea of former conviction or of former jeopardy cannot be predicated upon a preliminary hearing, is supported by a long line of authorities to be found in *16 C. J., 245.*

In *Williams v. State (Ind.), 82 N. E., 790,* appellant's plea of *autrefois acquit* based upon a discharge, after hearing by a United States commissioner, was overruled, the Court saying, "A discharge by a United States commissioner was not equivalent to an acquittal."

In Re Riely, 26 Fed., 852 (Brewer, Circuit Judge), in speaking of the Extradition Treaty between Great Britain and the United States, says:

> "What is the main purpose and scope of that contract obligation between the two nations? Is

it limited to a mere contract as to the manner in which the alleged criminality shall be investigated, or is it, on the other hand, a contract that the alleged fugitive shall be extradited, leaving the details by which the criminality is to be ascertained to the authorities of the respective governments? It seems to us that the latter is the true intent and purpose; that **the alleged fugitive, if his criminality is sufficiently ascertained, shall be surrendered.** This is in furtherance of what must be conceded to be a just policy, and it is a policy that has gradually become recognized all over the civilized world; that while this government opens its doors to all citizens of every nation it does not mean that this country shall become an asylum for the criminals of those nations; that it is for the interest of every nation, and of every individual, that no criminal shall anywhere find an escape from the pursuing hands of justice. **It is not a contract that one government shall furnish to other governments one opportunity for investigating—one time for inquiry—but that it shall surrender the alleged criminal if his criminality shall be clearly ascertained.** It is conceded law that where one is arrested for a local offense **and a preliminary examination fails for any reason**—such as a defect in the jurisdiction of the examining magistrate, lack of evidence, informality of papers—**that is no bar to a second proceeding.** * * * We all know how often, in the administration of justice, it happens that a preliminary examination fails. The testimony first presented is insufficient; the officer is found not to have jurisdiction; the complaint is technically defective, and the proceedings fail. It would be an outrage

> upon justice if for any such reason as that there could be no further prosecution of one charged with crime and equally, in extradition cases, a violation of the spirit, if not of the letter of the treaty. It seems to us that it is as if this government should say to a foreign nation, 'True, we have agreed by solemn compact to return to you a man who is charged by a person duly authorized with having committed a crime, if the evidence of his crime is satisfactory, but in this instance we will not surrender him simply because on the first presentation of your case you have failed to make out a sufficient showing.' "

Muller's case, Fed. cases 9913, holds that a hearing before a commissioner for extradition is "analagous to successive preliminary hearings before local committing magistrates under ordinary charges of crime," and, hence, that a previous discharge is not of itself sufficient to bar another affidavit and trial.

In *Ex Parte Schorer, 195 Fed., 334,* it was held that discharge is no bar to a second extradition proceeding.

> "Indeed, it was conceded upon this hearing that the power on the part of the government, and, therefore, its duty, to institute second proceedings, is not open to question. The question is, therefore, presented: Is there any thing in the record before us showing any fact or circumstance, or any course of procedure by reason of which it can be successfully contended that such power has been lost, or that the government must, out of respect to the

rights of the accused, be held to be absolved from the duty of exercising it? I think this question must be answered in the negative. The record before the Court, and even considering the facts pertaining to the former arrest and examination of the petitioner, certainly cannot be construed to show that the government of the United States has been absolved by any act of the German government or its officials, from the treaty obligation. It must be assumed that this obligation is binding upon this government until it can in all fairness say to the foreign government that any attempt as against the petitioner to subject him to extradition proceedings is so subversive of the protection which this government desires to afford all within her borders, and is so repugnant to the principles recognized by this government in its own Courts and toward its own citizens in the matter of arresting and examining alleged offenders, that the right of the German government to insist upon the performance of the treaty obligation has either been exhausted or can no longer be urged."

In Re Farez, 7 Blatch, 35, it is said in the syllabus:

"Where a writ of *habeas corpus* is served on a marshal commanding him to produce before the Court the body of a person in his custody, such person is in the custody of this Court under such writ from the time it is served on the marshal, and the marshal cannot lawfully arrest such person on a warrant as a fugitive in an extradition proceeding until the proceedings under the writ of *habeas corpus* are terminated."

In the body of the opinion (page 48), the Court says:

> "When the question of the lawfulness of the detention under the first warrant should have been disposed of, then the marshal could properly proceed to execute the second warrant, but not before."

In this case Farez was discharged on *habeas corpus*, but a new affidavit was made against him (See *In Re Farez, 7 Blatch, 345)*, and under this new affidavit Farez was discharged from custody under the Commissioner's commitment, but was held under the warrant of arrest, and the Commissioner directed to allow defendant to testify. Farez, believing that he was entitled to a final discharge, applied to Mr. Justice Nelson, of the Supreme Court of the United States, for writs of *habeas corpus* and writs of *certiorari*. Justice Nelson refused to issue the writs. Whereupon, Farez applied to a Judge of the Circuit Court of the United States. He issued the writs, but on trial affirmed the judgment of the District Court, *In Re Farez, 7 Blatch, 491.*

The alleged fugitive may be arrested a second time on a new complaint, either with or without a new warrant of the President. *6 Op. Atty. Gen.,* ~~21~~. 501

A discharge by a District Judge of a person apprehended as a fugitive from justice does not preclude, in a proper case, his rearrest under the warrant of another Judge, with a view to a re-examination of the case. *10 Op. Atty. Gen.,* ~~504~~. 91

It was held in *Wright v. Henkel, 190 U. S., p. 40, Lawyer's Edition, Vol. 47, p. 948, Syllabus No. 4.*

> "The dismissal of an appeal from an order of the United States Circuit Court dismissing writs of *habeas corpus* to inquire into a detention under a warrant of arrest issued in extradition proceedings is not required because of the pendency, as appears on the argument of such appeal, of proceedings on a second complaint by the demanding government which reiterates the original charge with some amplification, and charges an additional offense."

In the body of the opinion the Court says:

> "The affirmance of the final order leaves it open to the demanding government to withdraw the proceedings first instituted, and proceed on the subsequent application the pendency of which is called to our attention, we do not think required us to dismiss the appeal."
>
> *Id. Lawyer's Edition, p. 956; Regular Edition, p. 63.*

> "The pendency of the *habeas corpus* proceeding did not deprive the Commissioner of jurisdiction to entertain the application for arrest on the affidavit of complaint. When Splain, in obedience to the writ, brought Stallings before the Court, he passed from the custody of the marshal into that of the Court and he remained under its protection and control although enlarged on bail. Barth v. Clise, 12 Wall., 400. But he did not thereby become immune from all other process until the *habeas corpus* proceedings should have been finally

disposed of. Commonwealth v. Hall, 9 Gray, 262. Lack of jurisdiction in the Commissioner did not follow from the fact that the Court had acquired, by virtue of the *habeas corpus* proceedings, the custody of and control over Stallings. Even if the affidavit or complaint had related to another indictment brought in a different district, the Commissioner would have had jurisdiction to entertain it."

Stallings v. Splain, 253 U. S., 339.

The object of extradition proceedings is to ascertain probable guilt, and purely technical defenses are not favored.

In *Bingham v. Bradley, 241 U. S., 511,* it was said:

"All the objections savor of technicality. And since the jurisdiction of the Commissioner is clear, and the evidence abundantly sufficient to furnish reasonable ground for the belief that appellant has committed within the Dominion of Canada a crime that is an offense under the laws of the Dominion, as well as under those of Illinois, and is covered by the terms of the treaty, and that he is a fugitive from justice, a fair observance of the obligations of the treaty requires that he be surrendered."

In *Glucksman v. Henkel, 221 U. S., 512,* it is said:

"It is common in extradition cases to attempt to bring to bear all the fictitious subtleties of a criminal trial at common law. But it is a waste of time. For while, of course, a man is not to be sent from

the country merely upon demand or surmise, yet if there is presented, even in somewhat untechnical form according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender."

"Where the proceeding is manifestly taken in good faith a technical noncompliance with some formality of criminal procedure should not be allowed to stand in the way of a faithful discharge of our obligations."

Grin v. Shine, 187 U. S., 181.

"Objections of this class are not given the weight once awarded to them, when the granting of a request for extradition was more jealously regarded by the Courts than it is today, originally it seemed to be the theory that the sole foundation of the practice rested in reciprocity, and that, if some particular foreign country were backward about returning our criminals, we would be keen to keep theirs. During this period Courts were astute to find flaws in certificates, jurats, seals and signatures as an excuse for refusing the request of some demanding government. At last, however, it seems to have been discovered that the thief, the ruffian or the forger was not a particularly valuable acquisition, and that, although it might be highly desirable that offenders against our laws should be brought back here and tried, as a deterrent example, it was possibly more important that this country should not be made a city of refuge for foreign criminals, and that an enlightened public

policy would be astute to return them, once we were satisfied that they were criminals."

In Re Neely, 103 Fed., 626, quoted with approval in *In Re Grin, 112 Fed., 790.*

It is respectfully submitted that the judgment appealed ought to be affirmed.

ROBERT H. MARR,
Of Counsel for Appellee.

COLLINS *v.* LOISEL, UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 880. Argued May 4, 1923.—Decided June 4, 1923.

1. The provision of the Fifth Amendment against double jeopardy does not prevent the commitment of a person for extradition on new affidavits after he has been discharged on others identical in form and substance. P. 429.
2. Under the extradition treaty with Great Britain, a fugitive may be arrested a second time upon a new complaint charging the same crime, when he has been discharged by the magistrate on the first complaint or the first complaint has been withdrawn. P. 429.
3. Refusal of the State Department to issue a warrant of extradition because of the pendency of *habeas corpus* proceedings, does not bar further proceedings for the same cause on a new complaint. P. 430.
4. A discharge in *habeas corpus* based on mere irregularities in extradition proceedings, does not operate as *res judicata* against a new proceeding for the same offense. P. 430.

5. The pendency of *habeas corpus* proceedings relating to one charge in extradition, does not deprive the magistrate of jurisdiction to entertain an application for arrest on other charges or render invalid his warrant issued on such application. P. 430.
6. The crime for which a fugitive is extradited need not be specifically set forth in the magistrate's order of commitment, if sufficiently identified by the magistrate's finding and his certificate to the Secretary of State. P. 431.
7. By established practice, the warrant of extradition issued by the Secretary of State likewise identifies the crime. P. 431.

Affirmed.

APPEAL from a judgment of the District Court dismissing a petition for *habeas corpus*. See *post*, 730.

Mr. J. Zach Spearing, with whom *Mr. J. Kemp Bartlett* and *Mr. Guion Miller* were on the brief, for appellant.

Mr. Robert H. Marr appeared for appellee.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

This is the third appeal by Collins in *habeas corpus* proceedings instituted to prevent his extradition to British India. After the decision in *Collins* v. *Miller*, 252 U. S. 364, the District Court dismissed the application for *habeas corpus* so far as the commitment was based on the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza, and remanded Collins to the custody of Loisel, the marshal. The judgment of the District Court discharged the prisoner, so far as the commitment was based on charges of obtaining property by false pretenses from Pohoomul Brothers and from Ganeshi Lall & Sons. The ground of the discharge, stated in the judgment, was that Collins had been remanded to await further proceedings on these charges, to the end that he might be given the opportunity of introducing evidence at a preliminary examination under the law of Louisiana; that no further examination had been held;

that the prosecution on those affidavits had been definitely abandoned; and that other new affidavits had been filed by the British Consul General. In this judgment the British Consul General acquiesced. Collins appealed. The judgment was affirmed in *Collins* v. *Loisel*, 259 U. S. 309.

On those new affidavits, referred to in the judgment, apparently Collins was again committed to await extradition; the papers were transmitted for action to the Department of State with the magistrate's certificate; but, owing to the fact that proceedings were still pending in the District Court, the Department refused to issue the warrant of extradition. Thereafter, while the *Loisel Case* was pending in this Court, and while Collins was being held in custody to answer on the charge of obtaining property from Mahomed Alli Zaimel Ali Raza, a third set of affidavits were lodged against the prisoner by the British Consul General before the same committing magistrate. They were in form and substance identical with those in which Collins had been previously charged with obtaining property by false pretenses from Pohoomul Brothers and from Ganeshi Lall & Sons and discharged by the District Court. Alleging that the affidavits were identical with those first filed on which he had been so discharged, Collins moved, before the magistrate, to quash the new affidavits. His motion was overruled; and, after due hearing, an order was entered by the magistrate again committting Collins to be held for extradition on these charges. Then he filed, in the same District Court, this petition for a writ of *habeas corpus* and *certiorari*. Judgment was entered therein in December, 1922, dismissing this second petition for a writ of *habeas corpus;* Collins was remanded to the custody of the marshal; and this appeal was taken under § 238 of the Judicial Code. After hearing counsel for appellant, this Court on May 4, 1923, ordered that the judgment below be affirmed; and that

the mandate issue forthwith. Because of the importance of the questions presented, the reasons for this decision are now stated.

Collins contended that commitment on the new affidavits, after discharge in proceedings based on others identical in form and substance, was a violation of the Fifth Amendment and of the Treaty with Great Britain. The constitutional provision against double jeopardy can have no application unless a prisoner has, theretofore, been placed on trial. See *Kepner* v. *United States*, 195 U. S. 100, 126. The preliminary examination of one arrested on suspicion of a crime is not a trial; and his discharge by the magistrate upon such examination is not an acquittal. *Commonwealth* v. *Rice*, 216 Mass. 480. *People* v. *Dillon*, 197 N. Y. 254, 256. Even the finding of an indictment, followed by arraignment, pleading thereto, repeated continuances, and eventually dismissal at the instance of the prosecuting officer on the ground that there was not sufficient evidence to hold the accused, was held, in *Bassing* v. *Cady*, 208 U. S. 386, 391, not to constitute jeopardy. Likewise it has been consistently held under the treaties with Great Britain and other countries, that a fugitive from justice may be arrested in extradition proceedings a second time upon a new complaint charging the same crime, where he was discharged by the magistrate on the first complaint or the complaint was withdrawn.[1] The precise question appears not to have been passed upon by this Court in any case involving international extradition. But in *Bassing* v. *Cady, supra*, the rule was applied to a case of interstate rendition. Protection against unjustifiable vexation and harassment in-

[1] 6 Ops. Atty. Gen. 91; 10 Ops. Atty. Gen. 501; *In re Macdonnell*, 11 Blatchf. 170, 179; *In re Kelly*, 26 Fed. 852; *Fergus, Petitioner*, 30 Fed. 607; *Ex parte Schorer*, 195 Fed. 334; See also 1 Moore on Extradition, pp. 457–464; 1 Hyde, International Law, p. 596; *Muller's Case*, 5 Phila. 289; *In re Farez*, 7 Blatchf. 345.

cident to repeated arrests for the same alleged crime must ordinarily be sought, not in constitutional limitations or treaty provisions, but in a high sense of responsibility on the part of the public officials charged with duties in this connection. The proceedings before the committing magistrate on the first and on the second set of affidavits, and the action of the Department of State on the latter, were no bar to the proceedings on the third set of affidavits here involved. The filing by the British Consul General of these new affidavits was clearly justified.

The discharge of Collins on the first petition for *habeas corpus*, so far as it related to the charge of obtaining property from Pohoomul Brothers and from Ganeshi Lall & Sons does not operate as *res judicata*. It is true that the Fifth Amendment in providing against double jeopardy, was not intended to supplant the fundamental principle of *res judicata* in criminal cases, *United States* v. *Oppenheimer*, 242 U. S. 85; and that a judgment in *habeas corpus* proceedings discharging a prisoner held for preliminary examination may operate as *res judicata*. But the judgment is *res judicata* only that he was at the time illegally in custody, and of the issues of law and fact necessarily involved in that result.[2] The discharge here in question did not go to the right to have Collins held for extradition. It was granted because the proceedings on which he was then held had been irregular and the British Consul General, instead of undertaking to correct them, had concluded to abandon them, and to file the charges anew by another set of affidavits.

The contention was also made that, as the arrest on the new affidavits after discharge on the old was an independent proceeding, and Collins was then being held on an entirely different charge under review by this Court

[2] Compare *Ex parte Milburn*, 9 Pet. 704, 710; *In re White*, 45 Fed. 237; *United States* v. *Chung Shee*, 71 Fed. 277; 76 Fed. 951; *Ex parte Gagliardi*, 284 Fed. 190.

in the *Loisel Case,* the magistrate was without jurisdiction. There was here no attempt to interfere by the second proceeding with the custody of Collins on the first. The fact that Collins was in the custody of the court did not render invalid the second warrant. It would merely prevent withdrawal of the prisoner from the custody of the court by means of the execution of a second warrant. *In re Macdonnell,* 11 Blatchf. 170, 177, 178. Compare *Ponzi* v. *Fessenden,* 258 U. S. 254, 260, 265. The pendency of *habeas corpus* proceedings, relating to the charge involved in the *Loisel Case, supra,* did not deprive the magistrate of jurisdiction to entertain this application for arrest on other charges. *Stallings* v. *Splain,* 253 U. S. 339, 342.

It was further contended that the magistrate's order of commitment was insufficient, because it adjudged that Collins be held for extradition "for trial on the charges pending against him in the Chief Presidency Magistrate's Court at Bombay"; and that, since he could legally be tried there only on the charge for which he was extradited, the order of commitment must specifically set forth that crime. *United States* v. *Rauscher,* 119 U. S. 407. The contention is unsound. The order must, of course, be interpreted as limited by the finding therein made, that the evidence produced "justify his commitment on the charge of having obtained property by false pretenses." The certificate which the magistrate issued thereon to the Secretary of State identifies the charge as those set forth in the two new affidavits. By established practice, the warrant of extradition issued by the Secretary of State likewise identifies the crime with which the prisoner has been charged and for the trial of which the prisoner is delivered up. Moreover, it may be assumed that the British Government will not try appellant upon charges other than those upon which the extradition is allowed. *Kelly* v. *Griffin,* 241 U. S. 6, 15.

Affirmed.